No. 5688

United States

Circuit Court of Appeals

For the Ninth Circuit.

GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORPORATION, LTD., a Corporation,

Appellant,

vs.

L. A. CLARK and ETTA CLARK, His Wife,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the District of Arizona.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS OF RECORD.

LE ROY ANDERSON, Esq., Prescott, Ariz.,
LEO T. STACK, Esq., Prescott, Ariz.,
Attorneys for Plaintiff (Appellee).

SLOAN, HOLTON, McKESSON & SCOTT, Fleming Bldg., Phoenix, Ariz.,
EDWIN GREEN, Esq., Fleming Bldg., Phoenix, Ariz.,
Attorneys for Defendant (Appellant).

In the Superior Court of the State of Arizona, in and for the County of Yavapai.

L. A. CLARK and ETTA CLARK, His Wife,
Plaintiffs,

vs.

GENERAL ACCIDENT, FIRE AND LIFE ASSURANCE CORPORATION, LTD.,
Defendant.

COMPLAINT.

Come now the plaintiffs above named and for their cause of action against defendant, allege:

I.

That plaintiffs are residents of Yavapai County, Arizona, and at all of the times herein mentioned have been and now are husband and wife; that de-

fendant, so plaintiffs are informed and believe, is a Scottish corporation, duly qualified and licensed to do and transact the business of an indemnity insurance company in the State of Arizona.

II.

That on the 2d day of July, 1927, and for a long time prior thereto, one George Ross was duly licensed and permitted by the Arizona Corporation Commission, under the provisions of Chapter 130 of the Session Laws of Arizona, 1919, and acts amendatory thereof and supplemental thereto, to carry on and conduct a taxi service business in the City of Prescott, County of Yavapai, and vicinity, and owned, maintained, used and operated in connection therewith one certain Paige Sedan automobile.

III.

That in order to qualify for said license, and as one of the conditions therefor, said George Ross was required to and [1*] did obtain and file with the Arizona Corporation Commission one certain policy of indemnity insurance duly written and issued by defendant by which said policy defendant did insure and agree to indemnify said George Ross against loss by reason of any liability imposed by law upon said George Ross for damages on account of bodily injuries suffered by any person by reason of the ownership, maintenance or use of said Paige Sedan; and to defend in the name and on behalf

*Page-number appearing at the foot of page of original certified Transcript of Record.

of said George Ross any suits brought against him on account of any such happenings.

IV.

That in conformity with the orders of the Arizona Corporation Commission duly adopted and promulgated under said Chapter 130 defendant was required to and did attach to said policy of indemnity insurance a special rider or clause whereby defendant agreed, in consideration of the premium at which said policy was written, and its acceptance by said Arizona Corporation Commission as a compliance with said Commission's orders, that, any provision therein contained to the contrary notwithstanding, said policy should inure to the benefit of any or all persons suffering loss or damage, and that if final judgment is rendered against said assured by reason of any loss or claim covered by said policy defendant would pay said judgment to the plaintiff securing the same upon demand. That said Arizona Corporation Commission duly accepted and approved said policy of indemnity insurance with said special rider or clause attached thereto, as aforesaid, as a compliance by said George Ross and defendant with the rules, regulations and orders of said Commission, and said policy was in full force and effect for the period of one year beginning with the 5th day of February, 1927.

V.

That on the 2d day of July, 1927, at the City of Prescott, said George Ross, while engaged in the conduct of [2] said taxi service business and

while acting within the scope of his said license and permit, and within the terms, provisions and conditions of said policy of indemnity insurance, and while in an intoxicated condition drove said Paige Sedan negligently, carelessly and in violation of the traffic rules and regulations of the State of Arizona and the City of Prescott, and crashed and collided with one certain automobile driven and operated by plaintiffs thereby inflicting upon plaintiffs, and each of them, grevious bodily injuries; that the proximate cause of said accident and injuries to plaintiffs was the negligence and intoxication of said George Ross.

VI.

That plaintiffs thereafter instituted an action in the Superior Court of Yavapai County, Arizona, being Cause No. 10508 therein, against said George Ross to recover damages for and on account of said injuries suffered by plaintiffs as aforesaid in which said action appearance was entered in the name and on behalf of said George Ross by counsel employed by defendant, to wit: Messrs. Sloan, Holton, McKesson and Scott, of Phoenix, Arizona, and said counsel, together with other counsel employed by said George Ross, appeared for and represented said George Ross throughout said suit; that said cause was tried by said Court, with a jury, and on the 9th day of November, 1927, plaintiffs, jointly, recovered a judgment against said George Ross for and on account of said bodily injuries suffered by plaintiffs, and each of them, as aforesaid, in the sum

of Fifteen Thousand Dollars ($15,000.00), together with costs assessed at the sum of $196.35.

VII.

That said judgment is a final, valid, subsisting and unsatisfied judgment, and execution thereof has not been superseded, and that defendant, by reason of the aforesaid [3] special rider or clause, is liable to plaintiffs under said policy for the amount of said judgment.

That plaintiffs have demanded of defendant the payment of said judgment and the same has been denied.

WHEREFORE, plaintiffs pray judgment against defendant for the sum of $15,196.35, and costs of suit.

ANDERSON & GALE,
Attorneys for Plaintiffs.

Filed at 10:30 o'clock A. M., Mar. 19, 1928. Kitty R. Crossman, Clerk. By Emma Shull, Deputy. [4]

[Title of Court and Cause.]

SUMMONS.

Action brought in the Superior Court of Yavapai County, State of Arizona.

The State of Arizona Sends GREETINGS to General Accident, Fire and Life Assurance Corporation, Ltd.

You are hereby summoned and required to appear in an action brought against you by the above-

named plaintiff in the Superior Court of Yavapai County, State of Arizona, and answer the complaint filed with the Clerk of this court at Prescott in said county (a copy of which complaint accompanies this summons), within twenty days (exclusive of the day of service), after the service upon you of this summons, if served in this county; in all other cases thirty days, after the service of this summons upon you (exclusive of the day of service).

And you are hereby notified that if you fail to appear and answer the complaint as above required, plaintiff will take judgment by default against you and judgment for costs and disbursements in this behalf expended.

Given under my hand and seal of said court at Prescott this 19th day of March, A. D. 1928.

[Court Seal] KITTY R. CROSSMAN,
Clerk.
By Emma S. Hull,
Deputy.

ANDERSON and GALE,
Attorneys for Plaintiffs. [5]

State of Arizona,
County of Maricopa,—ss.

I hereby certify that I received the within summons on the 20 day of March, 1928, and personally served the same on the 21 day of March, 1928, on General Accident, Fire and Life Assurance Corporation, Ltd., being the defendant named in said summons, by delivering to Loren Vaughn, as a

member of the Arizona Corporation Commission, County of Maricopa, two copies of summons and two true copies of the complaint in the action named in the said summons, attached to said summons.

Dated this 21 day of March, 1928.

J. D. ADAMS,
Sheriff.
By GEO. A. BRAWNER,
Deputy.

Sheriff's Fee, Service $1.50
Mileage 2 .....$ .30

Total $1.80

Filed March 28, 1928, at 2:20 o'clock P. M. Kitty R. Crossman, Clerk. By Lula McIntosh, Deputy. [6]

In the District Court of the United States for the District of Arizona.

No. 272—LAW—PRESCOTT.

L. A. CLARK and ETTA CLARK, His Wife,
Plaintiffs,

vs.

GENERAL ACCIDENT, FIRE AND LIFE ASSURANCE CORPORATION, LTD.,
Defendant.

PLEA IN ABATEMENT AND DEMURRER.

Comes now the defendant, General Accident, Fire and Life Assurance Corporation, Ltd., by its attorneys, Sloan, Holton, McKesson & Scott, and as a plea in abatement to the plaintiffs' complaint shows to the Court as follows:

That if George Ross, mentioned in plaintiffs' complaint, did obtain and file with the Arizona Corporation Commission one certain policy of indemnity insurance, duly written and issued by defendant, as alleged in plaintiffs' complaint, and if in conformity with the orders of the Arizona Corporation Commission duly adopted and promulgated, or otherwise, a special rider or clause was attached to said policy, as alleged in plaintiffs' complaint, providing that said policy should inure to the benefit of any and all persons suffering loss or damage, defendant alleges that all benefits conferred by said rider or clause upon persons suffering loss or damage were conditioned upon the recovery by said persons of a final judgment against the person assured in said policy of indemnity insurance and that the right or benefit on the part of any person or persons so injured was subject to all of the covenants, terms, conditions and agreements contained in said policy of insurance. [24]

Defendant further alleges that if the plaintiffs in the above-entitled cause, after the 2d day of July, 1927, instituted an action in the Superior Court of the State of Arizona in and for the County of Yava-

pai, being cause No. 10,580 in said Superior Court, against one George Ross to recover damages for and on account of personal injuries suffered by plaintiffs, and if said cause was tried on the 9th day of November, 1927, as alleged in plaintiffs' complaint and a judgment recovered against said George Ross for and on account of said personal injuries in the sum of Fifteen Thousand Dollars ($15,000.00), together with costs of One Hundred Ninety-six and 35/100 Dollars ($196.35), as alleged in plaintiffs' complaint, that said judgment is not a final judgment as contemplated by the special rider so attached to said policy of insurance, or as contemplated by the rules and regulations of said Arizona Corporation Commission, or as contemplated by the laws of the State of Arizona in such case made and provided.

Defendant further alleges that if there is a judgment as alleged in plaintiffs' complaint against the said George Ross and in favor of said plaintiffs in this action that an appeal has been perfected and is now pending in the Supreme Court of the State of Arizona from said judgment and that said judgment will not become final as contemplated by law and by the said contract and rider and by the rules and regulations of the Corporation Commission of the State of Arizona until said appeal has been heard and the issues thereof determined by said Supreme Court of the State of Arizona.

WHEREFORE, defendant prays that said action be abated pending a determination by the Supreme Court of the State of Arizona of the is-

sues involved in the appeal of said cause No. 10,580 in the Superior Court of Yavapai County, Arizona.

SLOAN, HOLTON, McKESSON & SCOTT,
Attorneys for Defendant. [25]

DEMURRER.

Should the foregoing plea in abatement be denied, but without waiving the same, or any part thereof, defendant as a further defense to said complaint demurs thereto as follows:

I.

That said complaint does not state facts sufficient to constitute a cause of action.

WHEREFORE, defendant prays the judgment of the Court as to the sufficiency of said complaint; that the same be dismissed and that it recover its costs herein expended.

SLOAN, HOLTON, McKESSON & SCOTT,
Attorneys for Defendant.

[Endorsed]: Filed May 19, 1928. [26]

[Title of Court and Cause.]

MOTION TO VACATE AND SET ASIDE ORDER FOR JUDGMENT AND FOR LEAVE TO ANSWER.

Comes now General Accident, Fire & Life Assurance Corporation, Ltd., a corporation, defendant above named, by its attorneys, Sloan, Holton, McKesson & Scott, and moves the Court to vacate and

set aside its order for judgment against the defendant in the above-entitled cause, entered on the sixth day of August, 1928, and for leave to answer herein, and for grounds thereof represents:

I.

That said order was entered contrary to Rule 20 of the Rules of Practice of the United States District Court in and for the District of Arizona, which said rule reads as follows:

"RULE 20.

PLEAS.

There can be no plea in actions at law, but in such cases the answer takes the place of all pleas. In suits in equity, pleas may be put in subject to the provisions of these rules and subject to the provisions of the equity rules. All matter in abatement, in cases where pleas are permissible, shall be set up by plea, and if not so set up shall be waived; provided, that objections to the Federal jurisdiction may be taken as provided by Rule 94. [27]

* * * * * * * * *

If a plea be set down for argument and overruled, the party putting in the plea shall have, as of course, and without special leave of the Court, ten days after service of written notice of decision in which to put in his answer."

II.

That said order was entered contrary to Rule 15 of the Rules of Practice of the United States Dis-

trict Court in and for the District of Arizona, which said rule reads as follows:

"RULE 15.

LEAVE TO ANSWER ON OVERRULING A DEMURRER—TERMS.

Where a demurrer to a complaint at law or bill in equity is overruled the party demurring shall, unless otherwise specially ordered, have, as of course, and without any special order therefor, ten days after service by the clerk of written notice of the overruling of such demurrer in which to file his answer to the complaint or bill. Mere knowledge of the decision overruling the demurrer shall not be deemed to be the equivalent of the notice above provided for.

III.

That said order was entered against this defendant by surprise in that the hearing on the motion on which said order was entered was not duly and regularly held, for the reason that counsel for defendant was not notified of said hearing and was given no opportunity to be present at said hearing.

IV.

That defendant had, and still has, a good and valid defense to the whole of said complaint, and tenders herewith its answer to said complaint.

V.

That the plea in abatement and demurrer filed in this cause by defendant were not, nor was either of them, immaterial, insufficient, frivolous or with-

out merit; that said plea in abatement and demurrer were filed in said cause by the defendant in good faith. [28]

VI.

That ten days have not elapsed since the overruling of said demurrer to said complaint and the denial of said plea in abatement and the time for answering has not expired, as provided in said Rules 15 and 20 of the Rules of Practice of the United States District Court in and for the District of Arizona.

VII.

The foregoing motion is based upon the affidavit of T. G. McKesson attached hereto and filed herewith, marked Exhibit "A" and upon the proposed answer of defendant tendered herewith, and upon all the papers, records and files in said cause.

RICHARD E. SLOAN,
C. R. HOLTON,
GREIG SCOTT and
T. G. McKESSON,
Attorneys for Defendant. [29]

EXHIBIT "A."

In the District Court of the United States for the District of Arizona.

No. L.—272—PRESCOTT.

L. A. CLARK and ETTA CLARK, His Wife,
Plaintiffs,

vs.

GENERAL ACCIDENT, FIRE AND LIFE ASSURANCE CORPORATION, LTD.,
Defendant.

AFFIDAVIT IN SUPPORT OF MOTION TO VACATE AND SET ASIDE ORDER FOR JUDGMENT AND FOR LEAVE TO ANSWER.

State of Arizona,
County of Maricopa,—ss.

T. G. McKesson, being first duly sworn, deposes and says:

That he is one of the attorneys of record for the defendant in the above-entitled cause, General Accident, Fire and Life Assurance Corporation, Ltd., a corporation, and makes this affidavit for and in behalf of said defendant as he is better informed as to the matters and things therein stated than any of the officers of said defendant corporation.

That said defendant regularly filed its plea in abatement and demurrer in this cause within the time to answer and the same came on regularly for

hearing on the 30th day of July, 1928, and was by the Court continued until the 6th day of August, 1928, for the purpose of hearing proof thereon; that affiant appeared in behalf of the defendant at said hearing on said 6th day of August, 1928, and evidence was introduced in support of defendant's plea in abatement; that the Court upon hearing same granted the defendant's plea in abatement; that thereupon counsel for plaintiffs stated that he had a recent case in point and believed that the plea in abatement should be denied; that thereupon the Court ordered the Clerk to [30] temporarily set aside his order granting defendant's plea in abatement and heard counsel for plaintiffs' argument; that thereafter the defendant's demurrer was overruled and the defendant's plea in abatement taken under advisement; a few minutes thereafter the court adjourned until two o'clock P. M.; that thereafter and at the hour of 1:55 P. M., affiant interviewed the Court in chambers and requested that inasmuch as counsel for defendant reside in Phoenix if the Court should deny defendant's plea in abatement that the defendant be granted twenty days within which to answer to the merits of plaintiff's complaint; that thereupon the Court informed affiant that he had read the recent decision cited by counsel for plaintiffs and had decided that the plea in abatement should be denied and that he had a few minutes previously thereto made an order denying defendant's plea in abatement and an order for judgment in favor of plaintiffs as prayed for in their motion for judgment.

Affiant further states that at the said hearing on the 6th day of August, 1928, that the motion of plaintiff for judgment was not heard, and no intimation was given affiant that said motion would be heard or determined and no opportunity was given affiant as counsel for the defendant herein, to be present at the hearing of said motion.

Affiant further states upon information and belief that the plaintiffs introduced no evidence to prove the allegations of their complaint at or before the time the Court made its order for judgment in favor of plaintiffs.

Affiant further states that defendant's plea in abatement and demurrer were filed in good faith and as affiant believed, were material and not frivolous or without merit.

Affiant further states that defendant has a good and valid defense to the whole of plaintiff's complaint, and that such defense to plaintiff's complaint is in substance as follows, to wit: [31]

That on or about the 5th day of February, 1927, the defendant corporation insured one George Ross, of the City of Prescott, Arizona, with its policy of insurance number 574373 against damages he might sustain by reason of an accident resulting in bodily injuries to or in the death of one person limited to the sum of Five Thousand Dollars ($5,000.00) for injuries to any such person from any one accident resulting in bodily injuries or death; that said policy was in full force and effect at the time of the alleged injuries to Etta Clark, one of the plaintiffs herein; that said

policy, in conformity with the orders of the Arizona Corporation Commission, carried the following indorsement:

"In consideration of the premium at which this policy is written and in further consideration of the acceptance by the Arizona Corporation Commission of this policy as a compliance with Orders No. ——— it is understood and agreed that regardless of any of the conditions of this policy, same shall cover passengers as well as other persons, and shall inure to the benefit of any or all persons suffering loss or damage, and suit may be brought thereon in any court of competent jurisdiction within the State, by any person, firm, association or corporation suffering any such loss or damage, if final judgment is rendered against the assured by reason of any loss or claim covered by this policy, the Corporation shall pay said judgment up to the limits expressed in the policy direct to the plaintiff securing said judgment, or the legal holder thereof, upon the demand of said plaintiff or holder thereof, whether the assured be or be not financially responsible in the amount of said judgment and that this policy may not be cancelled by either party except that written notice of the same shall have been previously given for at least ten days prior to the cancellation of such policy. PROVIDED, however, that no person suffering loss or damage, either to person or property, shall be entitled to avail himself of the benefits of this endorsement and rider to the policy unless within 20 days from the date of suffering

said loss or damage he shall serve written notice thereof upon the representative of the General Accident Fire and Life Assurance Corporation, Limited, at its office at Phoenix, Arizona.

It is further understood and agreed that this policy does not cover injuries or death to any employee of the assured, coming within the scope of the Workman's Compulsory Compensation Law, Chapter 7, Title XIV, Revised Statutes of 1913; originally Chapter 14, Laws of 1912, special session and codified by Chapter 7, Laws of 1913; Fourth Session. [32]

In all other respects the terms, limits and conditions of this policy remain unchanged.

Attached to and forming part of Policy No. A–574373 issued by the GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION, LIMITED, of Perth, Scotland, to George Ross, Prescott, Arizona.

Countersigned at Phoenix, Arizona.

Date February 5th, 1927.

THE STANDARD AGENCY, INC.,

————————————, Agent.

FREDERICK W. RICHARDSON,

United States Manager."

That the loss or claim covered by said policy inuring to the benefit of any person suffering such personal injuries in any one accident is limited by the terms of said policy to the sum of Five Thousand Dollars ($5,000.00) for bodily injuries or death to any one person for any one accident. That the largest amount plaintiffs might recover in

this action, if at all, is the sum of Five Thousand Dollars ($5,000.00), together with the costs of suit which affiant upon information and belief states to be One Hundred Ninety-six and 35/100 Dollars ($196.35).

Further affiant saith not.

T. G. McKESSON,

Subscribed and sworn to before me this 8th day of August, 1928.

[Notarial Seal] EDWIN D. GREEN,
Notary Public.

(My commission expires March 19, 1932.)

[Endorsed]: Filed Aug. 9, 1928. [33]

[Title of Court and Cause.]

DEMURRER AND ANSWER.

Comes now General Accident, Fire and Life Assurance Corporation, Ltd., a corporation, defendant above named, by its attorneys, Sloan, Holton, McKesson & Scott, and demurs to plaintiffs' complaint herein and for ground thereof states:

I.

That said complaint does not state facts sufficient to constitute a cause of action.

WHEREFORE, defendant prays the judgment of the Court as to the sufficiency of said complaint;

that the same be dismissed and that it recover its costs herein expended.

RICHARD E. SLOAN,
C. R. HOLTON,
T. G. McKESSON, and
GREIG SCOTT,
Attorneys for Defendant.

Should the foregoing demurrer be overruled, but without waiving the same, defendant further answering said complaint admits, denies and alleges as follows:

I.

Admits the allegations contained in Paragraph I thereof. [34]

II.

Admits the allegations contained in Paragraph II thereof.

III.

Denies each and every, all and singular, the allegations contained in Paragraph III thereof, except as hereinafter specifically admitted.

IV.

Denies all the allegations contained in Paragraph IV thereof and in that regard specifically alleges that in conformity with the orders of the Arizona Corporation Commission, duly adopted and promulgated, defendant was required to and did attach to said policy of indemnity insurance a special rider or clause whereby defendant, in consideration of the premium stated in said policy, agreed that regardless of any of the conditions of said policy, the same should cover passengers, as well as other per-

sons, and should inure to the benefit of all persons suffering loss or damage and that suit might be brought thereon in any court of competent jurisdiction within the State by any person, firm, association or corporation suffering any such loss or damage if final judgment was rendered against the assured by reason of any such loss or claim covered by said policy, and the defendant should pay said judgment up to the limits expressed in the policy, direct to the plaintiffs securing said judgment, or the legal holder thereof, upon receiving twenty days written notice from the person suffering such loss or damage.

Defendant further alleges that the limit of liability expressed in said policy issued to the said George Ross limited the defendant's liability to the sum of Five Thousand Dollars ($5,000.00) for bodily injuries or death to any one person for any one accident. That said policy of insurance together with said indorsement, was duly accepted and approved [35] by said Arizona Corporation Commission as a compliance by the said George Ross and defendant with the rules, regulations and orders of said Commission.

V.

Denies each and every, all and singular, the allegations contained in Paragraph V thereof.

VI.

Admits the allegations contained in Paragraph VI thereof.

VII.

Denies each and every, all and singular, the allegations contained in Paragraph VII thereof.

VIII.

Defendant further denies each and every allegation in said complaint contained not herein expressly admitted.

WHEREFORE defendant prays that plaintiffs take nothing by their said action and that it recover its costs herein incurred.

RICHARD E. SLOAN,
C. R. HOLTON,
T. G. McKESSON and
GREIG SCOTT,
Attorneys for Defendant.

State of Arizona,
County of Maricopa,—ss.

T. G. McKesson, being first duly sworn, deposes and says:

That he is one of the attorneys for General Accident Fire & Life Assurance Corporation, Ltd., a corporation, defendant in the above-entitled action, and makes this verification for and on behalf of said corporation defendant for the reason that it is a nonresident of and absent from the State of Arizona; that he has read the foregoing answer and knows the contents thereof; that the same is true, except as to those matters therein stated upon information and belief and as to those he believes it to be true.

T. G. McKESSON.

Subscribed and sworn to before me this 8th day of August, 1928.

[Notarial Seal] EDWIN D. GREEN,
Notary Public.

(My commission expires March 19, 1932.)

[Endorsed]: Filed Aug. 9, 1928. [36]

[Title of Court and Cause.]

AMENDED DEMURRER AND ANSWER.

Comes now General Accident, Fire and Life Assurance Corporation, Ltd., a corporation, defendant above named, by its attorneys, Sloan, Holton, McKesson & Scott, and for its amended demurrer to plaintiffs' complaint herein states:

I.

That several causes of action are improperly united.

II.

That said complaint does not state facts sufficient to constitute a cause of action.

WHEREFORE defendant prays the judgment of the Court as to the sufficiency of said complaint; that the same be dismissed and that it recover its costs herein expended.

SLOAN, HOLTON, McKESSON & SCOTT,
RICHARD E. SLOAN,
C. R. HOLTON,
T. G. McKESSON and
GREIG SCOTT,

and things set forth in plaintiffs' complaint defendant alleges:

I.

That the policy of insurance herein referred to contained, among other things, the following provision:

"GENERAL ACCIDENT,
Fourth and Walnut Sts.,
Philadelphia.

ARIZONA COMMON CARRIER ENDORSEMENT.

Not Valid Unless Countersigned by a Duly Authorized Representative of the Corporation.

In consideration of the premium at which this policy is written and in further consideration of the acceptance by the Arizona Corporation Commission of this policy as a compliance with Orders No. ———, it is understood and agreed that regardless of any of the conditions of this policy, same shall cover passengers as well as other persons, and shall inure to the benefit of any or all persons suffering loss or damage, and suit may be brought thereon in any court of competent jurisdiction within the State, by any person, firm, association or corporation suffering any such loss or damage, if final judgment is rendered against the assured by reason of any loss or claim covered by this policy, the Corporation shall pay said judgment up to the limits expressed in the policy direct to the plaintiff securing said judgment, [39] or the legal holder thereof, upon the demand of said plaintiff or holder

thereof, whether the assured be or be not financially responsible in the amount of said judgment and that this policy may not be cancelled by either party except that written notice of the same shall have been previously given for at least ten days prior to the cancellation of such policy. PROVIDED, however, that no person suffering loss or damage, either to person or property, shall be entitled to avail himself of the benefits of this endorsement and rider to the policy unless within 20 days from the date of suffering said loss or damage he shall serve written notice thereof upon the representative of the General Accident Fire and Life Assurance Corporation, Limited, at its office at Phoenix, Arizona.

It is further understood and agreed that this policy does not cover injuries or death to any employee of the assured, coming within the scope of the Workman's Compulsory Compensation Law, Chapter 7, Title XIV, Revised Statutes of 1913; originally Chapter 14, Laws of 1912, special session and codified by Chapter 7, Laws of 1913, Fourth Session.

In all other respects the terms, limits, and conditions of this policy remain unchanged.

Attached to and forming part of Policy No. 574373 issued by the GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION, LIMITED, of Perth, Scotland, to George Ross, Prescott, Arizona.

Countersigned at Phoenix, Arizona.

zona; that he has read the foregoing Answer and knows the contents thereof; that the same is true, except as to those matters therein stated upon information and belief and as to those he believes it to be true.

T. G. McKESSON. [41]

Subscribed and sworn to before me this 17th day of August, 1928.

[Notarial Seal] EDWIN D. GREEN,
Notary Public Maricopa County, Arizona.
(My commission expires March 19, 1932.)

[Endorsed]: Filed Aug. 18, 1928. [42]

[Title of Court and Cause.]

MOTION TO STRIKE AMENDED DEMURRER AND ANSWER.

Come now the plaintiffs above named, by their attorneys, Anderson and Gale, and move the Court to strike from the files herein defendant's amended demurrer and answer for the following reasons:

1. That said amended demurrer and answer was filed without leave of Court first obtained.

2. That under the rules of this Court, and the statutes of the State of Arizona relating to amendments of pleadings, defendant is not entitled to amend its demurrer and/or answer at this stage of the proceedings without special leave.

3. That the additional ground of demurrer attempted to be set up in said amended answer is frivolous in this, to wit: That it appears from the

complaint, to wit: Par. VI thereof, and it is admitted in Par. VI of defendant's answer that plaintiffs are suing in this action upon a joint judgment, and that separate recoveries are not asked.

4. That the matter contained in the first separate defense of said amended answer is sham and false in this, to wit: That it appears from the complaint, to wit: Par. VI thereof, and it is admitted in Par. VI of defendant's answer, that defendant appeared and was represented by its counsel, Messrs. Sloan, Holton, McKesson & Scott, in the cause in which the judgment referred [43] to was entered in the Superior Court of Yavapai County, Arizona, to wit: L. A. Clark and Etta Clark, His Wife, *versus* George Ross, and that defendant is, therefore, now barred and estopped from claiming or relying upon lack of notice on the part of plaintiffs of the occurrence of the accident and injuries sued on in said prior action, and for which said judgment was rendered.

5. That the matter contained in the second separate defense of said amended answer is sham and frivolous in this, to wit: That it appears from said complaint that plaintiffs are suing in this action in respect to injuries to more than one person, and that the judgment declared on in said complaint was rendered on account of injuries to more than one person. That it appears from all of the pleadings herein that the matters and things contained in said second separate defense are peculiarly within the knowledge of defendant and that denial thereof on information and belief is without

effect. That if defendant intends to predicate any defense upon lack of coverage of said policy it is its duty, in fairness and good faith toward the Court and plaintiffs, to make positive averments of the material facts.

6. That it appears from defendant's answer, and amended answer, as a whole that defendant is liable to plaintiffs in this action up to the limits of its policy.

This motion is based upon all of the pleadings, records and files of this action, and the memorandum of points and authorities submitted herewith.

ANDERSON & GALE,
Attorneys for Plaintiffs.

[Endorsed]: Filed Aug. 20, 1928. [44]

[Title of Court and Cause.]

STIPULATION WAIVING TRIAL BY JURY.

IT IS HEREBY STIPULATED AND AGREED by and between counsel for the respective parties hereto that jury trial of the above-entitled cause be, and it is hereby, waived, and that the issues of fact herein may be tried by the Court without a jury.

ANDERSON & GALE,
Attorneys for Plaintiffs.
SLOAN, HOLTON, McKESSON & SCOTT,
Attorneys for Defendant.

[Endorsed]: Filed Aug. 20, 1928. [45]

In the District Court of the United States, in and for the District of Arizona.

L.-272—PRESCOTT.

L. A. CLARK and ETTA CLARK, His Wife,
Plaintiffs,

vs.

GENERAL ACCIDENT, FIRE AND LIFE ASSURANCE CORPORATION, LTD., a Corporation,
Defendant.

JUDGMENT.

This cause came on regularly for trial on the 21st day of August, 1928, before the Court, sitting without a jury, trial by jury having heretofore been waived by written stipulation of counsel for the respective parties hereto, duly made and filed herein; plaintiffs being represented by counsel, Messrs. Anderson and Gale, defendant appearing by counsel, Messrs. Sloan, Holton, McKesson and Scott.

Both parties having introduced evidence, both oral and documentary, in support of the allegations of their respective pleadings, and the cause having been fully argued to the Court, by counsel for the respective parties, and by the Court taken under advisement, and now the Court having fully considered the evidence and the law applicable thereto, and being fully advised in the premises, finds that plaintiffs have established all of the material allega-

tions of their complaint, and are entitled to judgment for the full amount of defendant's liability, to wit: Ten Thousand Dollars ($10,000.00),— [46]

IT IS ORDERED, ADJUDGED AND DECREED that plaintiffs, L. A. Clark and Etta Clark, his wife do have and recover of and from defendant, General Accident, Fire and Life Assurance Corporation, Ltd., a corporation, the sum of Ten Thousand Dollars ($10,000.00) and costs assessed at the sum of $29.60.

Done in open court this 28th day of August, 1928.

F. C. JACOBS,
Judge.

[Endorsed]: Filed Aug. 29, 1928. [47]

[Title of Court and Cause.]

BILL OF EXCEPTIONS.

BE IT REMEMBERED that on the 23d day of April, 1928, the record on removal from the Superior Court of the State of Arizona in and for the County of Yavapai, to the United States District Court for the District of Arizona, in the above-entitled cause was filed with the Clerk of said United States District Court. That among the record so filed, as aforesaid, was the complaint of the plaintiffs originally filed in said Superior Court of Yavapai County, Arizona. That said complaint sought a recovery from the defendant by reason of a judgment alleged to have

been had against one George Ross, in cause No. 10580 in the Superior Court of Yavapai County, Arizona, wherein the plaintiffs herein were plaintiffs in said suit and the said George Ross, defendant, and wherein it is claimed by the plaintiffs that the defendant herein is liable on account of having written a policy of insurance covering the car which occasioned the accident complained of in said complaint, which said complaint is a part of the pleadings and record in this case and on file herein.

That thereafter and on the 19th day of May, 1928, the defendant, by its attorneys, filed with the Clerk of the United States District Court its plea in abatement and demurrer [48] upon the ground and for the reason that if George Ross, mentioned in plaintiffs' complaint, did obtain and file with the Arizona Corporation Commission the certain policy of indemnity insurance duly written and issued by defendant, as alleged in plaintiffs' complaint, and if in conformity with the orders of the Arizona Corporation Commission duly adopted and promulgated, or otherwise, a special rider or clause was attached to said policy, as alleged in plaintiffs' complaint, providing that said policy should inure to the benefit of any and all persons suffering loss or damage, nevertheless all benefits conferred by said rider or clause upon persons suffering loss or damage were conditioned upon the recovery by said persons of a final judgment against the person assured in said policy of indemnity insurance, and the right or benefit on the part of any person

or persons so injured was subject to all the covenants, terms, conditions and agreements contained in said policy of insurance; and upon the further ground that if the plaintiffs in said action did institute an action in the Superior Court of the State of Arizona in and for the County of Yavapai against George Ross to recover damages for and on account of personal injuries suffered by plaintiffs, and that if said cause was tried as alleged in said complaint and judgment recovered against George Ross for the sum of $15,000.00, together with costs in the sum of $196.35, that said judgment is not a final judgment as contemplated by the special rider so attached to said policy of insurance, or as contemplated by the rules and regulations of said Arizona Corporation Commission, or as contemplated by the laws of the State of Arizona in such case made and provided; and, for the further reason that, if there is a judgment as alleged in plaintiffs' complaint against the said George Ross and in favor of said plaintiffs in this action, that an [49] appeal has been perfected and is now pending in the Supreme Court of the State of Arizona from said judgment, and that said judgment will not become final as contemplated by law and by the said contract and rider, and by the rules and regulations of the Corporation Commission of the State of Arizona until said appeal has been heard and the issues thereof determined by said Supreme Court; which said plea in abatement and demurrer is a part of the pleadings and record in the case and on file herein.

That thereafter and on the 26th day of May, 1928, the plaintiffs filed herein a motion to strike said plea in abatement as sham and defendant's demurrer as frivolous and for judgment in favor of plaintiffs for want of any answer.

That thereafter and on the 6th day of August, 1928, the Court did set down the plea in abatement for hearing and defendant did introduce in evidence the alleged policy of insurance, a copy of which is attached hereto marked Exhibit "A" and defendant did introduce in evidence an exemplified copy of the notice of appeal and bond on appeal and a certificate by the Clerk of the Supreme Court of the State of Arizona showing that the case of L. A. Clark and Etta Clark, His Wife, vs. George Ross, No. 10580 in the Superior Court of Yavapai County, Arizona, was then pending on appeal in the Supreme Court of the State of Arizona and had not been disposed of and was not in default; a copy of which said notice of appeal, bond on appeal and certificate by said Clerk is hereto attached marked Exhibit "B," Exhibit "C" and Exhibit "D," respectively.

That thereafter and on said 6th day of August, 1928, the Court did grant said plea in abatement. That thereafter and on said day the Court did set aside said order granting defendant's plea in abatement and denied said plea in abatement and did overrule the demurrer and did order that plaintiffs [50] recover judgment against defendant as prayed for in their said complaint; to

all of which the defendant herein duly excepted, which exceptions were allowed by the Court.

That thereafter and on the 9th day of August, 1928, the defendant herein did move to set aside and vacate said order for judgment and did file a proposed demurrer and answer. That thereafter and on the 13th day of August, 1928, the Court did set aside its said order for judgment and permitted the filing of said demurrer and answer by the defendant, which said demurrer and answer are a part of the pleadings and record in this case and on file herein.

BE IT FURTHER REMEMBERED that thereafter and on the 18th day of August, 1928, the defendant herein did serve an amended demurrer and answer upon the plaintiffs herein and on the 20th day of August, 1928, did ask leave of the Court to file said amended demurrer and answer. That said amended demurrer and answer, in addition to the defenses set up in the original demurrer and answer, did demur to said complaint upon the ground that there were several causes of action improperly united, and did set up in said amended answer, in addition to the defenses set up in the original answer, the following defenses:

"I.

That the policy of insurance herein referred to contained, among other things, the following provision:

'GENERAL ACCIDENT
Fourth and Walnut Sts.,
Philadelphia.

ARIZONA COMMON CARRIER ENDORSEMENT.

Not Valid Unless Countersigned by a Duly Authorized Representative of the Corporation.

In consideration of the premium at which this policy is written and in further consideration of the acceptance by the Arizona Corporation Commission of this policy as a compliance with Orders No. ———, it is understood and agreed that regardless of any of the conditions of this policy, same shall cover passengers as well as other [51] persons, and shall inure to the benefit of any or all persons suffering loss or damage, and suit may be brought thereon in any court of competent jurisdiction within the State, by any person, firm, association or corporation suffering any such loss or damage, if final judgment is rendered against the assured by reason of any loss or claim covered by this policy, the Corporation shall pay said judgment up to the limits expressed in the policy direct to the plaintiff securing said judgment, or the legal holder thereof, upon the demand of said plaintiff or holder thereof, whether the assured be or be not financially responsible in the amount of said judgment and that this policy may not be cancelled by either party except that written notice of the same shall have been previously given for at least ten days prior to the cancellation of such policy. PROVIDED,

however, that no person suffering loss or damage, either to person or property, shall be entitled to avail himself of the benefits of this endorsement and rider to the policy unless within 20 days from the date of suffering said loss or damage he shall serve written notice thereof upon the representative of the General Accident Fire & Life Assurance Corporation, Limited, at its office at Phoenix, Arizona.

It is further understood and agreed that this policy does not cover injuries or death to any employee of the assured, coming within the scope of the Workman's Compulsory Compensation Law, Chapter 7, Title XIV, Revised Statutes of 1913; originally Chapter 14, Laws of 1912, special session and codified by Chapter 7, Laws of 1913, Fourth Session.

In all other respects the terms, limits and conditions of this policy remain unchanged.

Attached to and forming part of Policy No. 574373 issued by the GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION, LIMITED, of Perth, Scotland, to George Ross, Prescott, Arizona.

Countersigned at Phoenix, Arizona.

Date—February 5th, 1927.

THE STANDARD AGENCY INC.

M. KINGSBURY, Agent.

FREDERIC W. RICHARDSON,

United States Manager.'

II.

That this defendant has received no written notice from the plaintiffs, or either of them, within twenty days from the date of suffering said loss or damage, if any, as is provided in said indorsement, or at all, claiming any loss or damage under said policy or any policy issued by this defendant.

As a further and separate defense to said action defendant alleges:

I.

That said policy of insurance heretofore referred to contained, among others, the following provision: [52]

'STATEMENT 8: Regardless of the number of the assured involved, the Corporation's liability for loss from an accident resulting in bodily injuries to or in the death of one person is limited to Five Thousand Dollars ($5,000.00), and, subject to the same limit for each person, the Corporation's total liability for loss from any one accident resulting in bodily injuries to or in the death of more than one person is limited to Ten Thousand Dollars ($10,000.00).'

II.

That under said provision the limit of liability of this defendant to any person for injuries sustained arising out of any one accident is the sum of Five Thousand Dollars ($5,000.00). As to whether the plaintiffs herein, or either of them, were injured in an accident occasioned by the automobile covered by said policy of insurance herein referred to, or the extent or amount of injuries, if any, to

said plaintiffs, or either of them, this defendant is without information upon which to base a belief and therefore denies that said plaintiffs or either of them, were injured in any accident covered by said policy herein referred to."

That the Court did deny the application of the defendant for leave to amend said answer upon the ground that proof could properly be offered and received under its original answer of all of the defenses set forth in defendant's proposed amended answer; and upon the ground that said amended answer was not served and filed as prescribed by law, and because the first of the separate defenses contained therein, setting up lack of notice in avoidance of the policy was sham and frivolous in that the complaint alleged and the answer admitted that the defendant, General Accident, Fire & Life Assurance Corporation, Ltd., through its attorneys, Messrs. Sloan, Holton, McKesson & Scott, appeared for and represented George Ross, the defendant in cause No. 10580 in the Superior Court of Yavapai County, Arizona, throughout said suit and said defendant was, therefore, estopped to set up and allege lack of notice; to which ruling of the Court the defendant duly excepted and said exception was allowed by the Court.

BE IT FURTHER REMEMBERED that thereupon the case was called for trial and the plaintiffs and defendant in writing duly [53] waived a jury and plaintiffs proceeded to introduce evidence in support of their said complaint. That counsel for plaintiffs offered in evidence an instrument or

document designated "Abstract of Record" in the Supreme Court of the State of Arizona, in the appeal of Cause No. 10580 from the Superior Court of Yavapai County, Arizona. That said instrument or document was not nor did it purport to be a certified copy or copies of the records of the Supreme Court of the State of Arizona, or of the Superior Court of the County of Yavapai, State of Arizona, or of any other court. That said instrument or document was not nor did it purport to be the original of any judgment, judgment-roll, or any other record of the Superior Court of the County of Yavapai, State of Arizona, or of any other court. That said instrument or document did not contain the original nor any copy of the judgment-roll in cause No. 10580 in the Superior Court of the County of Yavapai, State of Arizona, certified to under the hand and seal of the lawful possessor of such records.

That counsel for plaintiffs stated that said document so offered was offered for the purpose of proving the pleadings, the judgment and verdict and other matters essential to be proven in this case in the case of L. A. Clark and Etta Clark vs. George Ross, Cause No. 10580, Superior Court of Yavapai County, Arizona, and referred to in plaintiffs' complaint. That attached hereto is a true copy of the pleadings, instructions, verdict and judgment in said Cause No. 10580 in said Superior Court, as shown by said purported Abstract of Record, received in evidence herein as Plaintiffs' Exhibit 1.

That counsel for defendant objected to the intro-

duction in evidence of said instrument or document upon the ground that it was not the best evidence and that said offer did not conform to the law with reference to the manner and mode for proving official documents and court records within the State of Arizona. [54] That the Court did thereupon overrule defendant's objection to the admission of said instrument or document in evidence and did admit the same in evidence as Plaintiffs' Exhibit No. 1; for the reason, as stated by the Court, that in view of the allegations in the answer admitting certain allegations contained in Paragraph VI of the complaint herein, said Exhibit No. 1 was admissible, which said paragraphs of the complaint and answer are as follows, to wit: Paragraph VI of the complaint reads as follows:

"VI.

"That plaintiffs thereafter instituted an action in the Superior Court of Yavapai County, Arizona, being Cause No. 10580 therein, against said George Ross to recover damages for and on account of said injuries suffered by plaintiffs as aforesaid in which said action appearance was entered in the name and on behalf of said George Ross by counsel employed by defendant, to wit: Messrs. Sloan, Holton, Mckesson and Scott, of Phoenix, Arizona, and said counsel, together with other counsel employed by said George Ross, appeared for and represented said George Ross throughout said suit; that said cause was tried by said Court, with a jury, and on the 9th day of November,

1927, plaintiffs, jointly, recovered a judgment against said George Ross for and on account of said bodily injuries suffered by plaintiffs, and each of them, as aforesaid, in the sum of Fifteen Thousand Dollars ($15,000.00), together with costs assessed at the sum of $196.35."

Paragraph VI of the answer reads as follows:

"VI.

Admits the allegations contained in Paragraph VI thereof." [56]

to which ruling of the Court the defendant did then and there duly except, which said exception was allowed by the Court.

BE IT FURTHER REMEMBERED that thereupon the plaintiffs did offer in evidence in support of their complaint a policy of insurance written by the General Accident, Fire & Life Assurance Corporation, Ltd., the defendant herein, agreeing to indemnify one George Ross, of the town of Prescott, County of Yavapai, State of Arizona, for the period beginning February 5, 1927, and ending December 31, 1927, on account of damages sustained by persons other than employees, by reason of the ownership, maintenance or use of one certain automobile alleged to be owned by said Ross, known as a Paige 5 Passenger Six Cylinder Sedan, built in the year 1926, Motor No. 417333, Serial No. 409495, to which the defendant duly objected upon the ground that it had not yet been shown that the automobile described in said policy was the automobile referred to in said complaint. That the Court did overrule

(Testimony of Leo T. Stack.)

said objection and said policy was admitted in evidence, to which the defendant duly excepted and said exception was allowed by the Court; a copy of said policy is attached hereto marked Exhibit "A."

That thereafter the plaintiffs herein did offer in evidence a letter from LeRoy Anderson addressed to "Mr. B. F. Hunter, c/o Standard Accident Ins. Co., Phoenix, Arizona," and a reply to said letter, signed "Standard Agency, Inc., By B. F. Hunter, Adjuster," and thereupon the following evidence was given and statements of Court and counsel made:

TESTIMONY OF LEO T. STACK, FOR PLAINTIFFS.

"LEO T. STACK, one of counsel for plaintiffs, being called as a witness on behalf of plaintiffs and first duly sworn, testified as follows: [55]

Direct Examination.

(By Mr. ANDERSON.)

Q. What is your name? A. Leo. T. Stack.

Q. Are you associated with the firm of Anderson & Gale? A. Yes, sir.

Q. Or the law office of Leroy Anderson?

A. Yes, sir.

Q. I will ask you to produce a letter written by Leroy Anderson to Mr. B. F. Hunter of the Standard Accident Insurance Company under date of July 7, 1927. Have you got the original?

Mr. HOLTON.—No, we haven't. I don't know anything about it.

(Testimony of Leo T. Stack.)

Mr. ANDERSON.—Q. I show you carbon copy of a letter, Mr. Stack, which I would ask to have the Clerk mark for identification—I show you a carbon copy of a letter and ask you what that is and where it was taken from?

Mr. HOLTON.—May we see that?

Mr. ANDERSON.—As soon as we identify it. When I offer it in evidence.

A. It is a letter written by the firm of Anderson & Gale.

Mr. HOLTON.—Just a minute. I object to that until we look at it. It is properly identified now and I think we have a right to look at it before there is any testimony.

The COURT.—He has not offered it yet. Don't testify to the contents.

A. It is a carbon copy of a letter written by Anderson & Gale on July 7, 1927, to B. F. Hunter, care of the Standard Accident Insurance Company, Phoenix, Arizona, regarding the Clark-Ross automobile collision.

Mr. ANDERSON.—Q. Is that a clean carbon copy of the original letter?

A. It is. It is taken from the office files of the matter in the same bundle of papers as all of the other correspondence we have relating to the matter and in the same folder in which we keep our copies of the pleadings.

The COURT.—Are you going to offer it?

Mr. ANDERSON.—Yes.

The COURT.—Submit it to counsel.

(Testimony of Leo T. Stack.)

Mr. ANDERSON.—Just as soon as I properly identify it.

(Document handed to Mr. Holton.)

Mr. ANDERSON.—Q. Now, I ask you to look at a letter marked—

The COURT.—Have you finished your question?

Mr. ANDERSON.—As soon as I get his—marked Plaintiffs' Exhibit 4 for identification and ask you what that is?

A. This is the answer of the Standard Agency signed by B. F. Hunter or purporting to have been signed by B. F. Hunter, adjuster, in answer to the letter marked for identification Plaintiffs' Exhibit 3.

Q. Was that received in due course of mail?

A. It was.

Q. Where has it been preserved since that time?

A. In the same folder as that from which Exhibit 3 was taken.

Q. And that is the original letter, is it?

A. It is.

Mr. ANDERSON.—I offer both of these, your Honor.

The COURT.—Offer them one at a time. You have offered three. Any objection?

Mr. SCOTT.—Yes. Just a second.

The COURT.—Any objection to it?

Mr. HOLTON.—Yes, if the Court please. I can't see any materiality or I can't see—

The COURT.—Well, let me see it.

(Document handed to the Court.) [57]

Mr. HOLTON.—There is nothing in this case, if the Court please, to show anyone that had any right to bind the defendant in this action. It seems to be a discussion of a question of compromise.

The COURT.—What is the clause of the policy that this is supposed to comply with?

Mr. ANDERSON.—That twenty days' notice that they set up.

The COURT.—What is it? I know about the notice but what is it?

Mr. ANDERSON.—I will find it here in a minute, if it is in here. I don't think it is on this policy at all, your Honor.

Mr. HOLTON.—If the Court pleases, may I see that? I haven't had a chance to read it.

Mr. ANDERSON.—Here it is. 'Providing, however, that no person suffering loss or damage either to persons or property shall be entitled to avail themselves of the benefit of this'—a rider to the policy—'unless within twenty days from the date of suffering such loss or damage he shall serve written notice thereof upon the representative of the General Accident, Fire & Life Assurance Corporation at its office in Phoenix, Arizona,' and we have proven that this was the general representative and this is the agency that wrote this policy and that this is a written notice to them.

The COURT.—Does this come within twenty days?

Mr. ANDERSON.—Yes, sir. I will prove that absolutely.

(Testimony of Leo T. Stack.)

Q. Do you know, Mr. Stack, of your own knowledge, when the Ross accident happened?

Mr. HOLTON.—Now, if the Court pleases—

Mr. ANDERSON.—I will bring it within that, so there will be no question about it.

A. On July 2, 1927.

The COURT.—What is the date of this letter?

Mr. ANDERSON.—July 7 and the reply July 11.

The COURT.—Now, the objection is on the ground that it is immaterial?

Mr. HOLTON.—And further ground that there is nothing in these letters which pretend to bind the General Accident.

The COURT.—Who is this written to, Hunter?

Mr. HOLTON.—Man by the name of B. F. Hunter, care of Standard Accident Assurance Company, Phoenix, Arizona.

The COURT.—Who is B. F. Hunter?

Mr. ANDERSON.—He is the claim agent and the agent of the Standard—whatever it is—insurance company who wrote this policy as shown by the records of the Corporation Commission and they are all—all they say here is upon the representatives of the General Accident, Fire & Life Assurance Corporation at its office in Phoenix, Arizona, and he is that representative.

The COURT.—You had better prove it.

Mr. ANDERSON.—Already proved it by the records of the Arizona Corporation Commission.

The COURT.—The records show that Hunter was the representative?

(Testimony of Leo T. Stack.)

Mr. ANDERSON.—No, shows the Standard Life and that he was the representative of them.

Mr. HOLTON.—The letter is addressed to the Standard Accident Insurance Company, Detroit, Michigan.

Mr. ANDERSON.—That is at Phoenix.

Mr. HOLTON.—And not the Standard Agency at all.

Mr. ANDERSON.—If the Court pleases, these objections are just plain silly and simply—I will go about it further. They know that they got this and, besides, they appeared and defended and that waived that written notice.

The COURT.—You say that.

Mr. ANDERSON.—I do and I will prove it.

Q. Mr. Stack, do you know who was present at the trial of the George Ross case verses L. A. Clark as representing the defendant here in this case? [58]

Mr. SCOTT.—Object to the question as wholly immaterial. These policies bind to defend the action, even though groundless. There is ample authority on that. It is immaterial whether they appeared for the defendant or who appeared for the defendant, so far as these notices are concerned.

The COURT.—Well, the objection is overruled. Answer the question.

A. C. R. Holton.

Mr. ANDERSON.—Q. Do you know who he represented and so stated?

(Testimony of Leo T. Stack.)

A. He appeared for Sloan, Holton, McKesson & Scott during the trial of that action.

Q. Did he appear for the defendant or for the Insurance Company, do you know?

Mr. SCOTT.—Object to the question and that there is no insurance company a party defendant to that action.

Mr. ANDERSON.—I know, but he stated that he was there and represented the Insurance Company.

Mr. SCOTT.—That is not the best evidence. The record itself—

Mr. ANDERSON.—There is no record of it, because—

The COURT.—If this man Hunter represented this agency, you can't—

Mr. ANDERSON.—Q. Do you know who Mr. Hunter represented?

Mr. HOLTON.—Object to that question.

The COURT.—Objection overruled.

A. I am not acquainted with him personally but he signs the letter on behalf of the Standard Agency.

Mr. HOLTON.—Object to that. The letter speaks for itself.

Mr. ANDERSON.—Q. Did he come to our office representing any particular insurance company?

A. I never talked to him personally.

Mr. HOLTON.—He has already stated he is not acquainted with him.

(Testimony of Leo T. Stack.)

Mr. ANDERSON.—Q. Do you know that he came there?

A. I think he came there at one time, yes.

Q. Do you know who he represented?

A. He represented the Ross insurer.

Mr. ANDERSON.—That is all.

Cross-examination.

(By Mr. HOLTON.)

Q. Mr. Stack, you stated at one time that you were not acquainted with this gentleman.

A. I am not personally acquainted with him, no.

Q. You did not see him when he was at the office—he did not interview you?

A. I never talked to him personally, so far as I now recall.

Mr. HOLTON.—That is all.

A. I know, however, that he came to the office.

Mr. SCOTT.—Object to the witness testifying when there is no answer before the Court.

The COURT.—Yes. Well, Exhibit 3 for Identification and 4 for Identification are admitted in evidence.

Mr. SCOTT.—May there be an exception?

Mr. HOLTON.—Exception noted, if the Court pleases.

Mr. ANDERSON.—If the Court please—

Mr. HOLTON.—May there be an exception?

Mr. ANDERSON.—I want to call attention to the way this—where we are getting on this.

Mr. HOLTON.—May there be an exception noted?

The COURT.—Enter an exception to the ruling of the Court admitting 3 and 4.

Mr. ANDERSON.—We allege in paragraph six of our complaint that plaintiffs thereafter instituted an action in the Superior Court [59] of Yavapai County, Arizona, against said George Ross to recover damages for and on account of said injuries suffered by plaintiff as aforesaid in which said action appearance was entered in the name and on behalf of said George Ross by counsel employed by defendant, to wit: Messrs. Sloan, Holton, McKesson and Scott, of Phoenix, Arizona, and said counsel together with other counsel employed by said Ross appeared for and represented said Ross throughout said suit; that said cause was tried, etc. Now they admit that they appeared there at that time.

Mr. HOLTON.—I have so testified, Mr. Anderson. I have so testified.

The COURT.—Is that for the purpose of notice?

Mr. ANDERSON.—Why, certainly, a waiver of notice. They had that right at that time and they did appear.

Mr. SCOTT.—The allegation is that we appeared for Ross, not the General Accident.

Mr. ANDERSON.—No.

The COURT.—Proceed.

Mr. SCOTT.—That is the allegation of paragraph six.

The COURT.—There is no objection, just simply a statement.

(Testimony of C. R. Holton.)

Mr. ANDERSON.—That is our case, your Honor.

The COURT.—Plaintiffs rest. Proceed with your defense."

That the Court overruled said objections and said letters were admitted in evidence, to which the defendant duly excepted, which said exceptions were allowed. That a copy of said letters so introduced in evidence are hereto attached marked Exhibit "E" and Exhibit "F," respectively.

TESTIMONY OF C. R. HOLTON, FOR PLAINTIFFS.

That thereafter the plaintiffs called C. R. HOLTON, counsel for defendant, who testified that he was one of counsel for the defendant, Ross, in the trial of the case of L. A. Clark and Etta Clark, His Wife, vs. George Ross, being cause No. 10580 in the Superior Court of Yavapai County, Arizona, hereinabove referred to, and that the abstract of record on appeal in said case was prepared in the office of Sloan, Holton, McKesson & Scott, by parties other than himself, and that he did not know whether it was correct or not.

TESTIMONY OF LEROY ANDERSON, FOR PLAINTIFFS.

That thereafter LEROY ANDERSON, one of the attorneys for the plaintiffs, testified in behalf of plaintiffs that as such attorney he had received a

(Testimony of Miss Dorothy Palmer.)
copy of said abstract of record on appeal in said case from the office of Sloan, Holton, McKesson & Scott. [60]

TESTIMONY OF MISS DOROTHY PALMER, FOR PLAINTIFFS.

Plaintiffs further introduced the testimony of MISS DOROTHY PALMER, Clerk of the Corporation Commission of the State of Arizona, solely to the effect that the policy of insurance mentioned in the complaint was duly filed in the office of the Corporation Commission and was in full force and effect during the period stated in said policy.

That the foregoing testimony of the witnesses hereinbefore named and the introduction of the exhibits hereinbefore mentioned constituted all the testimony put in by plaintiffs to sustain their complaint; that upon the conclusion of said testimony, plaintiffs then and there rested.

BE IT FURTHER REMEMBERED that upon the conclusion of plaintiff's testimony and evidence as put in by plaintiffs as hereinbefore stated, defendant moved to strike Plaintiffs' Exhibit No. 1, upon the ground that the same was incompetent and irrelevant evidence in that the matters therein contained were not exemplified copies of the record sought to be shown. Thereupon the Court overruled said motion, to which exception was then and there taken by the defendant and allowed by the Court.

BE IT FURTHER REMEMBERED that the defendant thereupon demurred to the evidence of plaintiffs upon the ground and for the reason that the same did not tend to prove or disprove any of the issues in the case, and upon the further ground that it appeared from the evidence that there were two causes of action improperly united, in that the plaintiffs, L. A. Clark and Etta Clark, sought in one action to recover for personal injuries received by them under a policy of insurance which limited the injuries received by any one person to $5,000, and that it did not appear from the evidence what, if any, injury or damage had been sustained by either of the plaintiffs, which said motion was by the Court overruled and an exception then and there duly noted and allowed by the Court. [61]

BE IT FURTHER REMEMBERED that the defendant thereupon moved for judgment in favor of the defendant and against the plaintiffs upon the ground and for the reason that said evidence failed to show what, if any, amount each of the plaintiffs was entitled to recover, and upon the further ground that the injuries complained of were not shown to have been caused by the automobile described in said policy introduced in evidence, in that there was no proof that the car described in the complaint was the car described in said policy of insurance, and upon the further ground that there were two causes of action improperly united, in that the policy of insurance introduced in evidence did not give the right to plaintiffs to recover jointly, but limited each to the amount of his injury, but not to exceed the sum of $5,000.00 and there was no

showing as to what damages were sustained by each of said plaintiffs, and upon the further ground that there was no evidence upon which to base any recovery under said complaint in that under the law of the State of Arizona in an action brought by a wife for personal injuries the husband is a necessary party plaintiff, and that, therefore, as a matter of law, no inference or presumption is to be drawn from the amount of the judgment itself what, if any, injury L. A. Clark may have suffered and the amount of the recovery based thereon; further, that if the plaintiffs in order to hold the insurance company under its policy of insurance, should have seen to it that the exact amount of the damage, and the exact amount of the recovery of each of the plaintiffs is ascertained and determined. Whereupon said motion was by the Court denied and the ruling duly excepted to and said exception allowed.

BE IT FURTHER REMEMBERED that thereupon the defendant introduced evidence in defense of said action and did introduce the original transcript of the court reporter's notes in said [62] cause of L. A. Clark and Etta Clark, His Wife, vs. George Ross, numbered 10580 in the Superior Court of Yavapai County, Arizona, hereinabove referred to.

That, as disclosed by the evidence reported in said transcript so introduced in evidence herein as Defendant's Exhibit "A," the automobile accident which formed the basis of said action No. 10580 in said Superior Court of Yavapai County, Arizona, occurred in the manner following:

That at about the hour of 5:30 P. M. on July 2, 1927, the defendant in said action, George Ross, a duly licensed operator of a taxi service in and about the City of Prescott, Yavapai County, Arizona, left the taxi gate of the Fair Grounds near said city driving a Paige Sedan automobile in which were riding, in addition to Ross, four men, one in the front seat by the side of Ross, and three in the rear seat, bound for Prescott. For some distance after leaving said Fair Grounds they proceeded along a road set apart for the use of taxi and for-hire cars and then entered upon the main highway, on Grove Street. Crossing said last-mentioned highway is a wash or dip, which although originally lined with concrete had been allowed to become in a rough and bumpy condition. From the time the car driven by Ross entered the main highway it travelled in a line of cars returning to Prescott from the rodeo held that day at the Fair Grounds. At a point forty to fifty feet south of the aforesaid wash or dip the Ross car, having left said line of cars and while attempting to pass another car, collided with a Hudson coach automobile driven in the opposite direction by L. A. Clark and in which was riding Etta Clark, plaintiffs in the action. That as a result of said collision Ross and three of his passengers were thrown out of the car and Ross was rendered unconscious and taken to the hospital. There was a sharp conflict in the evidence as to the rate of speed of the respective cars, the [64] testimony as to the Ross car varying from fifteen to fifty miles per hour. The testimony is also in conflict as to whether or

not Ross, the defendant in said action, was under the influence of intoxicants at the time of the wreck. According to some of the witnesses the Clark car at the time of the accident and just prior thereto was moving slowly or had come to a standstill. According to plaintiffs' witnesses the Ross car came down the road at a high rate of speed, zigzagging from side to side of the road, struck the wash or dip in the road, bounced, swerved and struck the Clark car a glancing blow in front. Following the collision the Ross car proceeded some twenty-five feet off the highway on the right-hand side of said road, where it struck a boulder or rock. Both cars involved in the accident remained in an upright position at all times. The Clark car was shoved about eighteen inches to the right but remained in the road. Upon the collision Mrs. Clark, who was riding in the front seat with her husband, was thrown against and through the windshield of their Hudson car, sustaining cuts and lacerations about the face and head and bruises in various parts of her body. That immediately following the accident Mr. Clark was bending over his wife ministering to her. According to the testimony of Mr. Clark, his wife, for a time following the collision, was in an unconscious condition.

According to plaintiffs' testimony their car was damaged as follows: The frame was sprung, the motor cracked, front bumper and fenders smashed, windshield broken and the steering-gear jambed The doors and bumper of the Ross car were damaged but the windshield was unbroken. One fender

was bent and a thumb screw on the windshield was broken off. [65]

That the following is all of the testimony in said cause No. 10580 in said Superior Court in any way relating to the personal injuries, if any, sustained by L. A. Clark, one of the plaintiffs therein:

The following testimony of said L. A. Clark, upon direct examination, in said cause, as set forth at the bottom of page 44 and top of page 45 of said reporter's transcript:

> "throwing my wife to the windshield and me on the steering wheel."

The following further testimony of said L. A. Clark, upon direct examination in said cause, as set forth at the bottom of page 54 and top of page 55 of said reporter's transcript:

> "Q. What happened to you, Mr. Clark—what injuries and how were you injured, if at all?
>
> A. By the throwing against the steering wheel my chest and some ribs were bruised and my back was injured and, of course, being very nervous from then on. In driving I am awfully nervous is about all with me."

The following testimony of C. Parker Preston, a witness on behalf of plaintiffs, as shown by the deposition of said witness Preston read at the trial of said cause in said Superior Court, and appearing on page 266 of said reporter's transcript:

> "Direct Examination.
>
> (By Mr. ANDERSON.)
>
> Q. Did you observe Mr. Clark's condition, the gentleman with the lady at the time you

(Testimony of J. E. Russell.)

went over to investigate their condition, at the time of the accident?

A. Outside of appearing to be exceedingly nervous, he was apparently uninjured."

That said transcript of court reporter's notes was received in evidence herein as Defendant's Exhibit "A." [63]

BE IT FURTHER REMEMBERED that J. E. RUSSELL was sworn as a witness for the defendant and testified as follows:

TESTIMONY OF J. E. RUSSELL, FOR DEFENDANT.

That he was one of the attorneys for George Ross, the defendant in the case of L. A. Clark and Etta Clark, His Wife, vs. George Ross, numbered 10580 in the Superior Court of Yavapai County, Arizona, above referred to, and was present at all times during the trial of said cause; that he heard the address to the jury by LeRoy Anderson, chief counsel for the plaintiffs in said cause; that the said Russell was thereupon asked what was said by said LeRoy Anderson in his argument to said jury at said trial with regard to the injuries sustained by Mr. L. A. Clark, to which counsel for plaintiffs then and there objected as incompetent and immaterial. That the defendant stated that it desired to and would prove by said witness, Russell, that said LeRoy Anderson did state in his argument to the jury in said cause that the plaintiffs were

(Testimony of C. R. Holton.)
claiming nothing for the plaintiff L. A. Clark; that said objection was thereupon sustained and defendant was refused permission to introduce evidence of such fact, to which ruling the defendant excepted and said exception was duly allowed.

BE IT FURTHER REMEMBERED that C. R. HOLTON was duly sworn as a witness on behalf of the defendant and testified as follows:

TESTIMONY OF C. R. HOLTON, FOR DEFENDANT.

That he was one of the attorneys for George Ross, the defendant in the case of L. A. Clark and Etta Clark, His Wife, vs. George Ross, cause No. 10580 in the Superior Court of Yavapai County, Arizona, and was present at all times during said trial; that he heard the address to the jury of LeRoy Anderson, chief counsel for the plaintiffs in said cause. That said witness, Holton, was thereupon asked to testify as to what remarks were made by the said LeRoy Anderson to the jury with reference to the injuries sustained by the plaintiff L. A. Clark, to which objection was made by plaintiffs upon the ground that [66] it was incompetent, irrelevant and immaterial. Thereupon counsel for defendant stated that it would prove by the witness Holton that the said LeRoy Anderson had during his address to the jury in said cause number 10580 in said Superior Court of Yavapai County, Arizona, stated that the plaintiff L. A. Clark was claiming nothing

in said action. Said objection was thereupon by the Court sustained, to which ruling the defendant excepted and the same was duly allowed.

The foregoing constituted all the evidence put in by defendant and there was no rebutting testimony on the part of plaintiffs.

BE IT FURTHER REMEMBERED that at the close of the testimony the defendant renewed the motions made by it at the close of plaintiff's case and upon the grounds and for the reasons therein given, all of which said motions were by the Court denied and exceptions taken by the defendant and duly allowed.

BE IT FURTHER REMEMBERED that thereupon the cause was submitted to the Court, who took the same under advisement. That thereafter and on the 28th day of August, 1928, said Court did render judgment in said cause in favor of plaintiffs and against the defendant in the amount of $10,000.00, and costs, which said judgment is in words and figures as follows, to wit:

"In the District Court of the United States, in and for the District of Arizona.

L. A. CLARK and ETTA CLARK, His Wife,
Plaintiffs,

vs.

GENERAL ACCIDENT, FIRE AND LIFE ASSURANCE CORPORATION, LTD., a Corporation,
Defendant.

JUDGMENT. [67]

This cause came on regularly for trial on the 21st day of August, 1928, before the Court, sitting without a jury, trial by jury having heretofore been waived by written stipulation of counsel for the respective parties hereto, duly made and filed herein; plaintiffs being represented by counsel, Messrs. Anderson and Gale, defendant appearing by counsel, Messrs. Sloan, Holton, McKesson and Scott.

Both parties having introduced evidence, both oral and documentary in support of the allegations of their respective pleadings, and the cause having been fully argued to the Court by counsel for the respective parties, and by the Court taken under advisement, and now the Court having fully considered the evidence and the law applicable thereto, and being fully advised in the premises, finds that plaintiffs have established all of the material allegations of their complaint, and are entitled to judgment for the full amount of defendant's liability, to-wit: Ten Thousand Dollars ($10,000.00).

IT IS ORDERED, ADJUDGED AND DECREED that plaintiffs, L. A. Clark and Etta Clark, his wife, do have and recover of and from defendant, General Accident, Fire and Life Assurance Corporation, Ltd., a corporation, the sum of Ten Thousand Dollars ($10,000.00) and costs assessed at the sum of $29.60.

Done in open court, this 28th day of August, 1928.

F. C. JACOBS,
Judge."

CERTIFICATE OF JUDGE TO BILL OF EXCEPTIONS.

The foregoing bill of exceptions having been presented to me for allowance within the time fixed by order of the Court for such purpose, and the same having been examined by me and found to be correct, the same is now on this 17th day of December, 1928, duly signed, approved and allowed.

F. C. JACOBS,
Judge. [68]

EXHIBIT "A."

PLAINTIFFS' EXHIBIT No. 2.

Filed August 20, 1928.

Automobile Liability only Policy

(Commercial Type Cars)

GENERAL ACCIDENT

Fire and Life

ASSURANCE CORPORATION, LTD.

of Perth, Scotland.

(Hereinafter Called the Corporation)

DOES HEREBY AGREE

(1) To Indemnify the Assured, named and described in Statement 1 of the Declarations forming part hereof, against loss by reason of the liability imposed by law upon the Assured for damages on

account of bodily injuries, including death at any time resulting therefrom, accidentally suffered or alleged to have been suffered while this policy is in force, by any person or persons other than employees engaged in the usual course of trade, business, profession or occupation of the Assured, by reason of the ownership, maintenance or use within the limits of the profession or occupation of the Assured, by reason of the ownership, maintenance or use within the limits of the United States of America or Canada, of any of the automobiles enumerated and described in Statement 5 of said Declarations.

(2) To Defend in the name and on behalf of the Assured any suits, even if groundless, brought against the Assured to recover damages on account of such happenings as are provided for by the terms of the preceding paragraph.

(3) To Pay, irrespective of the limits of liability expressed in Statement 8 of the Schedule of Declarations, all costs taxed against the Assured in any legal proceeding defended by the Corporation, all interest accruing after entry of judgment upon such part thereof as shall not be in excess of said liability and the expense incurred by the Assured for such immediate medical or surgical relief as is imperative at the time of the accident, together with all the expense incurred by the Corporation growing out of the investigation of such an accident, the adjustment of any claim or the defence of any suit resulting therefrom.

THE FOREGOING AGREEMENTS ARE SUBJECT TO THE FOLLOWING CONDITIONS:

CONDITION A. The Corporation's liability under this policy is limited as expressed in Statement 8 of the Declarations, which limits shall apply to each automobile covered hereby.

CONDITION B. This policy does not cover any obligation assumed by or imposed upon the Assured by any Workmen's Compensation agreement, plan or law, or cover any loss caused or suffered [69] by reason of the ownership, maintenance or use of any automobile under any of the following conditions: (1) While being driven or manipulated by any person in violation of law as to age, or if there is no legal age limit, under the age of 16 years; (2) While being driven or manipulated in any race or contest; (3) While being used for any purpose other than as specified in Statement No. 6 of said Declarations; (4) While being used for towing or propelling any trailer or any other vehicle used as a trailer; (5) While rented to others or being used to carry passengers for a consideration.

CONDITION C. The premium includes a charge for each automobile dependent upon its description as expressed in Statement 5 of the Declarations, and upon the uses to which it is to be put as expressed in Statement 6 of the said Declarations.

CONDITION D. The Assured upon the occurrence of every accident, and irrespective of whether any personal injury or property damage is ap-

parent at the time of the accident, shall give immediate written notice thereof, with the fullest information obtainable at the time, to the Corporation's head office at Philadelphia, Pennsylvania, or to its duly authorized agent. If a claim is made on account of such accident, the Assured shall give like notice thereof. If, thereafter, any suit is brought against the Assured to enforce such a claim, the Assured shall immediately forward to the Corporation every summons or other process served on him. The Corporation reserves the right to settle any claim or suit. Whenever requested by the Corporation the Assured shall aid in effecting settlements, securing information and evidence, the attendance of witnesses, and in prosecuting appeals, and shall at all times render to the Corporation all co-operation and assistance within his power.

CONDITION E. Except as herein elsewhere provided for, the Assured shall not voluntarily assume any liability, settle any claim, or incur any expense at his own cost, or interfere in any negotiation for settlement or legal proceeding, without the consent of the Corporation previously given in writing.

CONDITION F. No action shall lie against the Corporation to recover for any loss under this policy unless it shall be brought by the Assured for loss actually sustained and paid by him in money in satisfaction of a judgment after trial of the issue. No such action shall lie to recover under any other agreement of the Corporation herein contained.

unless brought by the Assured himself to recover money actually expended by him. In no event shall any such action lie unless brought within twelve (12) months after the right of action accrues as herein provided. It is understood and agreed that the Corporation does not prejudice by this condition any defenses against such action that it may be entitled to make.

CONDITION G. If any of the terms or conditions of this policy conflict with the law of any State within which coverage is granted, such conflicting terms and conditions shall be inoperative in such States in so far as they are in conflict with such law. Any specific statutory provision in force in any State within which coverage is granted shall supersede any condition of this policy inconsistent therewith.

CONDITION H. In case of payment of loss or expense under this policy, the Corporation shall be subrogated, to the amount of such payment, to all of the Assured's rights of recovery for such loss or expenses against persons, corporations [70] or estates, and the Assured shall execute any and all papers required, and shall co-operate with the Corporation to secure to the Corporation such rights.

CONDITION I. In the event of an accident resulting in bodily injuries to or in death of more than one person, all sums paid by the Corporation in settlement of claims arising therefrom, whether in suit or not, shall be accounted in diminution of

the Corporation's total liability on account of such accident, as provided for in Statement 8 of the Declarations; provided further, that if any such settlement thereunder shall be set aside through due legal process, the credit thereunder shall be void.

CONDITION J. This policy may be cancelled by either of the named parties at any time by a written notice to the other party stating when thereafter the cancellation shall be effective. Said notice may be served upon the Assured by delivery of same to him personally, or to any member thereof, if a co-partnership, or to any officer or person in charge of the business at the address given herein, should said Assured b*y* a Corporation. Said notice may also be served by depositing it in a postoffice, in a post-paid wrapper addressed to the Assured at the postoffice address given herein. If cancelled by the Assured, the Corporation shall receive or retain an earned premium for the time policy has been in force, calculated at short rates in accordance with the table endorsed hereon. If cancelled by the Corporation, the Corporation shall be entitled to the earned premium *pro rata.* The Corporation's check tendered to the Assured in the manner hereinbefore provided for the service of cancellation notice, shall be a sufficient tender of any unearned premium.

CONDITION K. If the Assured carries a policy of another insurer covering concurrently a claim covered by this policy, he shall not recover from the Corporation a larger proportion of any such

claim than the sum hereby insured bears to the whole amount of valid and collectible insurance applicable thereto.

CONDITION L. The Corporation through its duly authorized representatives shall have the right and opportunity at all reasonable times to inspect any of the automobiles described herein.

CONDITION M. No assignment of interest under this policy shall bind the Corporation unless the written consent of the Corporation is endorsed hereon by the United States Manager, or an Assistant United States Manager.

CONDITION N. No condition or provision of this policy shall be waived or altered except by written endorsement attached hereto and signed by the United States Manager or an Assistant United States Manager; nor shall knowledge possessed by any agent or by any other person, be held to effect a waiver of a change in any part of this contract.

CONDITION O. The personal pronoun herein used to refer to the assured shall apply regardless of number or gender.

CONDITION P. No person shall be deemed an agent of the Corporation unless such person is authorized in writing as such agent by the United States Manager.

CONDITION Q. The Statements 1 to 12 inclusive, in the Declarations hereinafter contained, are warranted by the Assured [71] to be true. This policy is issued in consideration of such war-

ranties and the provisions of the policy respecting its premium and the payment of the premium.

This space is intended for the attachment of such endorsement as may be executed as in the policy provided, and, when so executed and attached, they are to be construed as a part of the policy.

GENERAL ACCIDENT
Fourth and Walnut Sts.
Philadelphia.

ARIZONA COMMON CARRIER ENDORSEMENT

Not Valid Unless Countersigned by a Duly Authorized Representative of the Corporation.

In consideration of the premium at which this policy is written and in further consideration of the acceptance by the Arizona Corporation Commission of this policy as a compliance with Orders No. ——— it is understood and agreed that regardless of any of the conditions of this policy, same shall cover passengers as well as other persons, and shall inure to the benefit of any or all persons suffering loss or damage, and suit may be brought thereon in any court of competent jurisdiction within the State, by any person, firm, association or corporation suffering any such loss or damage, if final judgment is rendered against the assured by reason of any loss or claim covered by this policy, the Corporation shall pay said judgment up to the limits expressed in the policy direct to the plaintiff securing said judgment, or the legal holder thereof, upon the demand of said plaintiff or holder thereof,

whether the assured be or be not financially responsible in the amount of said judgment and that this policy may not be cancelled by either party except that written notice of the same shall have been previously given for at least ten days prior to the cancellation of such policy. PROVIDED, however, that no person suffering loss or damage, either to person or property, shall be entitled to avail himself of the benefits of this endorsement and rider to the policy unless within 20 days from the date of suffering said loss or damage he shall serve written notice thereof upon the representative of the General Accident Fire and Life Assurance Corporation, Limited, at its office at Phoenix, Arizona.

It is further understood and agreed that this policy does not cover injuries or death to any employee of the assured, coming within the scope of the Workmen's Compulsory Compensation Law, Chapter 7, Title XIV, Revised Statutes of 1913; originally Chapter 14, Laws of 1912, special session and codified by Chapter 7, Laws of 1913, Fourth Session.

In all other respects the terms, limits and conditions of this policy remain unchanged.

Attached to and forming part of policy No. 574373 issued by the GENERAL ACCIDENT, FIRE AND LIFE ASSURANCE CORPORATION, LIMITED, of Perth, Scotland, to George Ross, Prescott, Arizona.

FREDERIC W. RICHARDSON,
United States Manager.

Countersigned at Phoenix, Arizona. [72]

Date—February 5th, 1927.

THE STANDARD AGENCY INC.

M. KINGSBURY, Agent.

SCHEDULE OF DECLARATIONS.

STATEMENT 1: Name of Assured—George Ross.

STATEMENT 2: Address of Assured:
Street ————.
Town—Prescott.
County—Yavapai.
State—Arizona.

STATEMENT 3: The Assured is— Individual
(Individual, Copartnership, Corporation or Estate)

STATEMENT 4: The Policy Period shall be from February 5, 1927 to December 31, 1927, at 12 o'clock noon, standard time at Assured's address, as to each of said dates.

STATEMENT 5: A full description of the Automobiles to which this insurance is applicable is given below:

Descriptive Trade Name	Factory No.	Type or Model	Style of Body	Year Built	No. of Cyls.	Kind of Power
Car. No. 1						
Paige	M–417333		5 Pass Sedan	1926	6 Cyl.	Gas
	S–409495					
Car No. 2						
Car No. 3						
Car No. 4						

STATEMENT 6: The purpose for which the above-described Automobiles are to be used are Business & Pleasure Carrying Passengers for Hire (No jitney or bus service).

STATEMENT 7: Assured's occupation or business is Public Livery Service (No jitney or bus service).

STATEMENT 8: Regardless of the number of the Assured involved, the Corporation's liability for Loss from an accident resulting in bodily injuries to or in the death of one person is limited to Five Thousand Dollars ($5,000.00), and, subject to the same limit for each person, the Corporation's total liability for loss from any one accident resulting in bodily injuries to or in the death of more than one person is limited to Ten Thousand Dollars (10,000.00).

STATEMENT 9: None of the above-described automobiles will be rented to others or used to carry passengers for a consideration—except as herein stated carrying passengers for hire. [73]

STATEMENT 10: My stabling or garage arrangements for the above-described automobiles are in the place named in Statement 2—except as herein stated—No exceptions.

STATEMENT 11: No accident has been caused by any automobile driven by or for me, and no claim has ever been made against me as a result of any such accident, and no company has cancelled or refused to issue automobile insurance to me —except as herein stated— No exceptions.

STATEMENT 12: No similar insurance is carried by the Assured on the above-described automobiles — except as herein stated—No exceptions.

Class	Car No. 1 Premiums	Car No. 1 Limits	Car No. 2 Premiums	Car No. 2 Limits
Liability	90.14	5/10		
Damage to Property	Nil			
Damage to Car	Nil			
Endorsements	Nil			
Total	90.14			
Payable	50.00 Feb. 5, 1927			
	40.14 Aug. 5, 1927			

Class	Car No. 3 Premiums	Limits	Car No. 4 Premiums	Limits
Liability				
Damage to Property				
Damage to Car				
Endorsements				
Total				

IN WITNESS WHEREOF, The GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION, LIMITED, by its United States Manager, has executed these presents, but this policy shall not be valid unless countersigned by an authorized representative of the Corporation.

FREDERIC W. RICHARDSON,
United States Manager.

Countersigned at Phoenix, Arizona, this 5th day of February, 1927.

THE STANDARD AGENCY, INC.
Authorized for the Purpose.
M. KINGSBURY, Agent. [74]

SHORT RATE CANCELLATION TABLE.

	Per cent of Annual Prem.
1 day	2
2 days	4
3 "	5
4 "	6
5 "	7
6 "	8
7 "	9
8 "	9

		Per cent of Annual Prem.
9	days	10
10	"	10
11	"	11
12	"	12
13	"	13
14	"	13
15	"	14
16	"	14
17	"	15
18	"	16
19	"	16
20	"	17
25	"	19
30	"	20
35	"	23
40	"	26
45	"	27
50	"	28
55	"	29
60	"	30
65	"	33
70	"	36
75	"	37
80	"	38
85	"	39
90	" or three months	40
105	"	45
120	" or four months	50
135	"	55
150	" or five months	60

	Per cent of Annual Prem.
165 days	65
180 " or six months	70
195 "	73
210 " or seven months	75
225 "	78
240 " or eight months	80
255 "	83
270 " or nine months	85
285 "	88
300 " or ten months	90
315 "	93
330 " or eleven months	95
360 " or twelve months	100

AUTOMOBILE LIABILITY POLICY

(Commercial Type Cars)

Policy No. 574373

GENERAL ACCIDENT, FIRE AND LIFE ASSURANCE CORPORATION, LTD.

of Perth, Scotland

Established 1885

United States Offices
Fourth and Walnut Streets
Philadelphia

Issued to
GEORGE ROSS
Expires December 31, 1927

IMPORTANT
PLEASE READ YOUR POLICY [75]

EXHIBIT "B."

In the Superior Court of the State of Arizona, in and for the County of Yavapai.

No. 10,580.

L. A. CLARK and ETTA CLARK, His Wife,
Plaintiffs,

vs.

GEORGE ROSS,
Defendant.

NOTICE OF APPEAL.

Notice is hereby given that George Ross, defendant in the above-entitled action, appeals to the Superior Court of the State of Arizona from the judgment rendered in the Superior Court of Yavapai County, Arizona, in the above-entitled cause on the 9th day of November, 1927, in favor of the above-named plaintiffs and against the defendant, and from the whole thereof, and from that certain order made and entered in the above-entitled cause in said Superior Court of Yavapai County, on the 17th day of December, 1927, in and by which the above-named Superior Court did overrule and deny the motion for a new trial filed by said defendant in said cause.

SLOAN, HOLTON, McKESSON & SCOTT,
J. E. RUSSELL,
Attorneys for Defendant.

[Endorsements on cover]: (Title of Court and Cause.) Notice of Appeal. Filed 1:20 o'clock, P. M., Jan. 17, 1928. Kitty R. Crossman, Clerk. By ————, Deputy. [76]

REGISTER AND FEE BOOK, SUPREME COURT, ARIZONA.

No. 2752.

GEORGE ROSS,

Appellant,

vs.

L. A. CLARK and ETTA CLARK, His Wife,

Appellees.

SLOAN, HOLTON, McKESSON & SCOTT, J. E. RUSSELL, Attorneys for Appellant.

ANDERSON and GALE, Attorneys for Appellees.

Appeal from Superior Court of Yavapai County, Hon. RICHARD LAMSON, Judge.

1928.

May 5—Filed Record on Appeal, 3 Vols. Reporter's Transcript, Plaintiffs' Exhibits 1 for id. and 2–3–4–5–7–adm. in Evidence; Defendant's A–B–C–D–E for identification.

May 5—By check Sloan, Holton, McK. & S. $25.00

May 31—By check Anderson & Gale $15.00

June 1—4 Copies Abstract of Record

June 29—Stip. ext. time to file Applts Brief July 20 (Inc.)
July 20—4 Copies of Appellant's Brief
July 25—Letter of Appellees admitting service of Applts' Brief. [77]

EXEMPLIFICATION.

State of Arizona,
Supreme Court,—ss.

I, Eugenia Davis, Clerk of the Supreme Court of the State of Arizona, do hereby certify and attest the foregoing to be a full, true and correct copy of the Notice of Appeal filed in this court as a part of the record on appeal, from the Superior Court of the State of Arizona in and for the county of Yavapai, in that certain cause in this court numbered 2752, entitled: George Ross, Appellant, vs. L. A. Clark and Etta Clark, His Wife, Appellees, said cause having been filed in this court on the 5th day of May, 1928.

That the page next immediately following said Notice of Appeal is a full, true and correct copy of the docket entries in said cause, as the same appear in Book 9, Register and Fee Book of this court, at page 285 thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court, at Phoenix, this 3rd day of August, 1928.

[Seal of the Supreme Court]

EUGENIA DAVIS,
Clerk, Supreme Court, State of Arizona.

State of Arizona,
Supreme Court,—ss.

I, Henry D. Ross, Chief Justice of the Supreme Court of the State of Arizona, do hereby certify that Eugenia Davis is Clerk of the Supreme Court of the State of Arizona (which court is a court of record having a seal); that the signature to the foregoing certificate and attestation is the genuine signature of the said Eugenia Davis as such officer; that the seal annexed thereto is the seal of said Supreme Court; that said Eugenia Davis as such Clerk is the proper officer to execute the said certificate and attestation, and that such attestation is in due form according to the laws of the State of Arizona.

IN WITNESS WHEREOF, I have hereunto set my hand in my official character as such Chief Justice, at the City of Phoenix, State of Arizona, this 3rd day of August, 1928.

[Seal of the Supreme Court]

HENRY D. ROSS,

Chief Justice, Supreme Court of the State of Arizona. [78]

State of Arizona,
Supreme Court,—ss.

I, Eugenia Davis, Clerk of the Supreme Court of the State of Arizona, (which court is a court of record, having a seal, which is annexed hereto,) do hereby certify that HENRY D. ROSS, whose name is subscribed to the foregoing certificate of

due attestation was, at the time of signing the same, Chief Justice of the Supreme Court aforesaid, and was duly commissioned, qualified and authorized by law to execute said certificate. And I do further certify that the signature of the Chief Justice above named to the said certificate of due attestation is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and annexed the seal of said Supreme Court, at Phoenix, this 3rd day of August. 1928.

[Seal of the Supreme Court]

EUGENIA DAVIS,
Clerk, Supreme Court, State of Arizona.

[Endorsed]: Filed Aug. 6, 1928. C. R. McFall, Clerk United States District Court for the District of Arizona. By Paul Dickason, Chief Deputy Clerk. [79]

EXHIBIT "C."

In the Superior Court of the State of Arizona, in and for the County of Yavapai.

No. 10,580.

L. A. CLARK and ETTA CLARK, His Wife,
Plaintiffs,

vs.

GEORGE ROSS,
Defendant.

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS: That we, GEORGE ROSS, as principal, and

AMERICAN SURETY COMPANY, a corporation authorized to transact a surety business in the State of Arizona, as surety, are held and firmly bound unto L. A. CLARK and ETTA CLARK, his wife, plaintiffs in the above-entitled action, in the sum of FIVE HUNDRED DOLLARS ($500.00), lawful money of the United States, to be paid to the said L. A. Clark and Etta Clark, his wife, their heirs, executors, administrators and assigns, for which payment well and truly to be made we bind ourselves, and each of us our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

Dated this 24 day of January, 1928.

The CONDITION of this obligation is such THAT, WHEREAS, on the 9th day of November, 1927, a judgment was rendered in the Superior Court of the State of Arizona, in and for the County of Yavapai, in that certain action wherein L. A. Clark and Etta Clark, his wife, were plaintiffs, and George Ross was defendant, in favor of the said plaintiffs and against the said defendant, in and by which judgment it was ordered, adjudged and decreed that the said L. A. Clark and Etta Clark, plaintiffs, do have and recover of and from the said George Ross the sum of Fifteen Thousand [80] Dollars ($15,000.00), together with interest thereon from the date of said judgment until paid at the rate of six per cent per annum, together with said plaintiffs' costs assessed in said action, and jury fees in said action, and

WHEREAS, thereafter and within the time allowed by law the defendant, George Ross, did make a motion for a new trial of said action and did move said Court to grant a new trial thereof, which motion was on the 17th day of December, 1927, by order of said Superior Court denied, and

WHEREAS, said defendant does desire to take an appeal to the Supreme Court of the State of Arizona from said judgment and said order denying defendant's motion for a new trial.

NOW, THEREFORE, if the said George Ross shall prosecute his said appeal with effect and shall pay all costs which have accrued in said Superior Court, or which may accrue in said Supreme Court by reason of said appeal, then this bond shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF the said GEORGE ROSS has hereunto set his hand and the said American Surety Company has caused this instrument to be duly executed by its officer thereunto duly authorized, the day and year first hereinabove written.

GEORGE ROSS,
Principal.

AMERICAN SURETY COMPANY,
By C. F. AINSWORTH,
Resident Vice-President,
Surety.

[Seal] Attest: W. K. JAMES,
Resident Ass't Secy. [81]

Bond approved this 25th day of January, 1928.

KITTY R. CROSSMAN,
Clerk of Superior Court.

Filed at 10:20 o'clock A. M., Jan. 25, 1928. Kitty R. Crossman, Clerk.

State of Arizona,
County of Yavapai,—ss.

I, Kitty R. Crossman, Clerk of the Superior Court of Yavapai County, State of Arizona, do hereby certify and attest the foregoing to be a full, true and correct copy of the Bond on Appeal, in Cause No. 10,580, L. A. Clark and Etta Clark, His Wife, vs. George Ross, as the same appears on file and of record in my office, and I have carefully compared the same with the original.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Superior Court at Prescott, this 2d day of August, A. D. 1928.

[Seal of Superior Court]

KITTY R. CROSSMAN,
Clerk.
By Lula McIntosh,
Deputy.

Filed Aug. 6, 1928. C. R. McFall, Clerk United States District Court for the District of Arizona. By Paul Dickason, Chief Deputy Clerk. [82]

EXHIBIT "D."

CERTIFICATE OF CLERK OF SUPREME COURT.

State of Arizona,
Supreme Court,—ss.

I, Eugenia Davis, Clerk of the Supreme Court of the State of Arizona, do hereby certify that Cause No. 2752 in said court, entitled "George Ross, Appellant, vs. L. A. Clark and Etta Clark, His Wife, Appellees," is on appeal to said Supreme Court from the Superior Court of the State of Arizona in and for the County of Yavapai from a certain judgment of said Superior Court in Cause No. 10,580 therein entitled "L. A. Clark and Etta Clark, His Wife, Plaintiffs, vs. George Ross, Defendant"; that said appeal was duly docketed in said Supreme Court on the 5th day of May, 1928; that the abstract of record was filed by appellant therein on the 1st day of June, 1928; that on the 29th day of June, 1928, a stipulation by and between counsel for the appellant and appellees therein extending the time for filing appellant's opening brief to and including July 20, 1928, was filed in said cause; that on July 20, 1928, appellant duly filed his opening brief in said cause; that on the 25th day of July, 1928, appellant filed proof of service (in the form of a letter from attorneys for appellees) of opening brief and of reporter's transcript upon attorneys for appellees; that the time within which appellees are required to file

their brief in said Supreme Court has not expired and that said appeal from said judgment of said Superior Court of Yavapai County, Arizona, is now pending in said Supreme Court.

WITNESS my hand and the seal of said Supreme Court this 3rd day of August, 1928.

[Seal of the Supreme Court]

EUGENIA DAVIS,

Clerk, Supreme Court, State of Arizona. [83]

State of Arizona,
Supreme Court,—ss.

I, Henry D. Ross, Chief Justice of the Supreme Court of the State of Arizona, do hereby certify that Eugenia Davis is Clerk of the Supreme Court of the State of Arizona (which court is a court of record having a seal); that the signature to the foregoing certificate and attestation is the genuine signature of the said Eugenia Davis as such officer; that the seal annexed thereto is the seal of said Supreme Court; that said Eugenia Davis as such Clerk is the proper officer to execute the said certificate and attestation, and that such attestation is in due form according to the laws of the State of Arizona.

IN WITNESS WHEREOF, I have hereunto set my hand in my official character as such Chief Justice, at the City of Phoenix, State of Arizona, this 3rd day of August, 1928.

[Seal of the Supreme Court]

HENRY D. ROSS,

Chief Justice, Supreme Court, State of Arizona.

State of Arizona,
Supreme Court,—ss.

I, Eugenia Davis, Clerk of the Supreme Court of the State of Arizona, (which is a court of record having a seal, which is annexed hereto,) do hereby certify that Henry D. Ross, whose name is subscribed to the foregoing certificate of due attestation was, at the time of signing the same, Chief Justice of the Supreme Court aforesaid, and was duly commissioned, qualified and authorized by law to execute said certificate. And I do further certify that the signature of the Chief Justice above named to the said certificate of due attestation is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and annexed the seal of said Supreme Court, at Phoenix, this 3rd day of August, 1928.

[Seal of the Supreme Court]

EUGENIA DAVIS,
Clerk, Supreme Court, State of Arizona.

[Endorsed]: Filed Aug. 6, 1928. C. R. McFall, Clerk United States District Court for the District of Arizona. By Paul Dickason, Chief Deputy Clerk. [84]

EXHIBIT "E."

PLAINTIFF'S EXHIBIT No. 3.

July 7th, 1927.

Mr. B. F. Hunter,
c/o Standard Accident Ins. Co.,
Phoenix, Arizona.

Dear Mr. Hunter:—

I have further investigated the Clark-Ross automobile collision, and Mrs. Clark is really in a bad way. There were reports current on the street last night that she had died, but this, I find this morning, to be untrue. However, she is running a very high temperature, with frequent hemmorrhages, and it is quite apparent that she is going to have a bad time of it.

They had very high opinions as to what they should recover and want me to file suit for Fifteen Thousand Dollars. I believe there is a better chance to settle now than any other time because the woman is seriously ill. She is really in bad shape from her disease, as well as the accident. I believe if you will make me a firm offer of Twenty Five Hundred Dollars ($2500.00) I can get a settlement out of them, for both. This not to include anything for the automobile,—simply to cover the personal injury to Clark and Mrs. Clark, their doctor and medical attendants. This is the very best that I can possibly hope to do, and if we cannot get together on that basis, as reluctant as I am to bring suit against you, I will have to file suit against Ross for the Fifteen Thousand Dollars, and

I think the chances of getting a substantial verdict against him is very good.

Please let me know at your early convenience.

Very truly yours,

ANDERSON & GALE.

By ————————.

LA–c.

Plts. Exhibit No. 3. Marked for Identification Only. Case No. Law—272—Pct. [85]

Pltfs. Exhibit No. 3. Admitted and filed Aug. 20, 1928. C. R. McFall, Clerk. By Paul Dickason, Chief Deputy Clerk. Case No. Law—272—Prescott. Clark vs. General Accident. [86]

EXHIBIT "F."

PLAINTIFF'S EXHIBIT No. 4.

Fire
Automobile
Public Liability
Plate Glass
Burglary
Elevator
Workmen's Compensation
Accident and Health
Fidelity and Surety Bonds

THE STANDARD AGENCY, INC.

Formerly Carl H. Anderson Insurance Agency.

General Agents

INSURANCE AND SURETY BONDS,

Phoenix, Arizona.

July 11, 1927.

Adams Hotel Bldg. 16 E. Adams St.

Telephone 23101

Mr. Leroy Andersoy,

Prescott, Arizona.

Dear Mr. Anderson:

Re: Clark-Ross Collision.

Thanks for your prompt letter of the 7th inst. with reference to the above matter. We note, with regret, that Mrs. Clark is running a high temperature and has frequent hemorrhages, but wonder whether these conditions are attributable to the accident and whether they did not exist even prior to the accident.

We sincerely trust that the suit referred to by you will be withheld, at least until we have an opportunity to perhaps more fully acquaint ourselves with her present condition and to what extent her present condition is attributable to the accident. We note that you are inclined to be entirely reasonable in the matter, but we do feel from the information at present in hand, that $2500. would be out of proportion to the injury. May we ask your consent to communicating with Dr. Flynn for a full and complete report along the above lines, when we will likely be in position to advise further concerning the $2500. offer.

Yours very truly,
STANDARD AGENCY, INC.
By B. F. HUNTER.
B. F. HUNTER,
Adjuster.

BFH:PW.

Pltfs. Exhibit No. 4. Marked for Identification Only. Case No. Law—272—Pct.

Plfts. Exhibit No. 4. Admitted and filed Aug. 20, 1928. C. R. McFall, Clerk. By Paul Dickason, Chief Deputy Clerk. Case No. Law—272—Pct. Clark vs. General Accident. [87]

PLAINTIFF'S EXHIBIT No. 1.

In the Superior Court of the State of Arizona, in and for the County of Yavapai.

No. 10,580.

L. A. CLARK and ETTA CLARK, His Wife,
Plaintiffs,

vs.

GEORGE ROSS,
Defendant.

COMPLAINT.

Come now the plaintiffs above named and for their cause of action against defendant, allege:

I.

That plaintiffs are residents of Yavapai County, Arizona, and are now, and at all of the times herein mentioned have been husband and wife; that defendant is also a resident of Yavapai County, Arizona.

II.

That plaintiffs, at all of the times herein mentioned have been, and are now the owners of one certain Hudson Coach automobile, and in possession of the same; and defendant is now and at all of such times has been duly licensed and permitted by the Arizona Corporation Commission to carry on and

conduct a taxi service business in the city of Prescott, county of Yavapai, and vicinity, and used and has used in connection therewith one certain Paige Sedan automobile; that at all of the times herein mentioned defendant was acting within the scope of said business, license and permit.

III.

That on or about the 2d day of July, 1927, at about the hour of six o'clock P. M., plaintiffs were driving their said automobile in the city of Prescott, county of Yavapai, State of [88] Arizona, on North Grove Street, in a careful, lawful and prudent manner, and had approached, and were about to descend into one certain concrete apron upon and across said street a short distance north of the Mercy Hospital on said street, when defendant approached in said automobile from the opposite direction traveling at an excessive and unlawful rate of speed, to wit: at about fifty or sixty miles per hour, carelessly, negligently, recklessly, dangerously and with utter disregard for the traffic rules and regulations of the State of Arizona, and the city of Prescott, and the rights and safety of other persons traveling upon said street, swaying from side to side on said street, with control of his said automobile wholly lost; that as defendant was about to descend into said concrete apron plaintiff, observing the negligent, careless and dangerous manner in which defendant was operating his said automobile, as aforesaid, came to a full stop and drew over to the extreme right of said street in order to allow defendant full opportunity to pass; but that defendant

failed to reduce the speed at which he was traveling, and continued to operate his said automobile in such careless, negligent, reckless and dangerous manner, and continued to sway from side to side upon said street, and while plaintiff's said automobile was standing motionless, as aforesaid, upon the extreme right side of said street, defendant drove his said automobile into, upon and against, and crashed and collided with the automobile of plaintiff, thereby throwing and hurling plaintiff, Etta Clark, through the windshield thereof, severely cutting, bruising and injuring her on and about her face, head, arms and body; and thereby throwing and hurling plaintiff, L. A. Clark, upon and against the steering wheel of plaintiffs' said automobile inflicting serious bruises and injuries upon his chest and lungs. That at the time of said accident and collision plaintiff, Etta Clark, was sick and afflicted with tuberculosis, and the severe physical shock attendant [89] upon said collision has caused said disease to become more active and virulent, and has rendered her sick, sore and incapacitated, and deprived her of a large part of the benefit of medical care, treatment and rest, and have caused plaintiffs to expend and incur large sums of money for further necessary care and treatment.

IV.

That by reason of the facts aforesaid plaintiffs have been damaged and injured in the sum of Fifteen Thousand Dollars ($15,000.00).

V.

That at all of the times herein mentioned, plaintiffs were in the exercise of all due and proper care and caution, and were guilty of no contributory fault, and the negligence, carelessness and recklessness of defendant was the sole proximate cause of said accident and injuries.

WHEREFORE, plaintiffs pray judgment against defendants in the sum of Fifteen Thousand Dollars ($15,000.00), and for costs of suit.

ANDERSON and GALE,
Attorneys for Plaintiffs.

Come now the plaintiffs above named, and for a further and second cause of action against defendant, allege:

I.

Plaintiffs repeat and incorporate herein by reference the allegations of Paragraphs I and II of their first cause of action.

II.

That on or about the 2d of July, 1927, at about the hour of six o'clock, P. M., plaintiffs were driving their said automobile in the City of Prescott, County of Yavapai, State of Arizona, on North Grove Street, in a careful, lawful and prudent manner, and had approached, and were about to descend into one certain concrete apron upon and across said street a short distance [90] north of the Mercy Hospital on said street, when defendant approached in his said automobile from the opposite direction traveling at an excessive rate of speed, to

wit: at about fifty or sixty miles per hour, in a grossly careless, negligent, reckless and dangerous manner, and with utter disregard for the traffic rules and regulations of the State of Arizona, and City of Prescott, and the rights and safety of other persons traveling upon said street, swaying from side to side on said street, with control of his said automobile wholly lost; that defendant was then and there under the influence of intoxicating liquor to such extent that he was incapable of properly managing and controlling his said automobile at such excessive rate of speed, or at any rate of speed, or under any circumstances whatever; that as defendant was about to descend into said concrete apron plaintiff, observing the grossly negligent, careless and dangerous manner in which defendant was operating his said automobile, as aforesaid, came to a full stop and drew over to the extreme right of said street in order to allow defendant full opportunity to pass; but that defendant failed to reduce the speed at which he was traveling, and continued to operate his said automobile as aforesaid, and to sway from side to side upon said street, and while plaintiffs' said automobile was standing motionless, as aforesaid, upon the extreme right side of said street, defendant wantonly, culpably and with utter disregard of the consequences to life and limb of plaintiffs, and as a proximate result of his said gross negligence, recklessness and intoxicated condition, drove his said automobile into, upon and against, and crashed and collided with the automobile of plaintiffs, thereby throwing and hurling

plaintiff, Etta Clark, through the windshield thereof, severely cutting, bruising and injuring her on and about her face, head, arms and body, and inflicting divers severe wounds and injuries upon her; and thereby throwing and hurling plaintiff, L. A. Clark, [91] upon and against the steering wheel of plaintiffs' said automobile inflicting serious bruises and injuries upon his chest and lungs;

That at the time of said accident and collision plaintiff, Etta Clark, was sick and afflicted with tuberculosis, and that the severe physical shock attendant upon said collision has caused said disease to become more active and virulent, and has rendered her sick, sore and incapacitated, and has deprived her of a large part of the benefit of medical care, treatment and rest, and has caused plaintiffs to expend and incur large sums of money for further care and treatment rendered necessary by said collision and physical shock.

IV.

That by reason of the facts aforesaid plaintiffs have suffered actual damages in the sum of Fifteen Thousand Dollars ($15,000.00), and punitive damages in the sum of Five Thousand Dollars ($5,000.00).

V.

That at all of the times herein mentioned, plaintiffs were observing all due and proper care and caution, and were guilty of no contributory fault; and that the gross negligence, carelessness, wantonness, drunkenness and deliberate disregard of their rights

and safety by defendant, as aforesaid, was the sole proximate cause of said accident and injuries.

WHEREFORE, plaintiffs pray judgment against defendant in the sum of Fifteen Thousand Dollars ($15,000.00) for the further sum of Five Thousand Dollars ($5,000.00) as punitive damages, and for costs of suit.

ANDERSON and GALE,
Attorneys for Plaintiffs.

Come now the plaintiffs above named, and for a further and third cause of action against defendant, allege:

I.

Plaintiffs repeat and incorporate herein by reference the [92] allegations of Paragraphs I and II of their first and second causes of action.

II.

That on or about the 2d day of July, 1927, at about the hour of six o'clock, P. M., plaintiffs were driving their said automobile in the City of Prescott, County of Yavapai, State of Arizona, on North Grove Street, in a careful, lawful and prudent manner, and had approached, and were about to descend into one certain concrete apron upon and across said street a short distance north of the Mercy Hospital on said street, when defendant approached in his said automobile from the opposite direction traveling at an excessive rate of speed, to wit: at about fifty or sixty miles per hour, in a careless, negligent and reckless manner, and with utter disregard for the traffic rules and regula-

tions of the State of Arizona, and the City of Prescott, and the rights and safety of other persons traveling upon said street, swaying from side to side on said street, with control of his said automobile wholly lost; that as defendant was about to descend into said concrete apron plaintiff, observing the negligent, careless and dangerous manner in which defendant was operating his said automobile, as aforesaid, came to a full stop and drew over to the extreme right of said street in order to allow defendant full opportunity to pass; but that defendant failed to reduce the speed at which he was traveling, and continued to operate his said automobile in such careless, negligent, reckless and dangerous manner, and continued to sway from side to side upon said street, and while plaintiffs' said automobile was standing motionless, as aforesaid, upon the extreme right side of said street, defendant drove his said automobile into, upon and against, and crashed and collided with the automobile of plaintiffs, thereby breasking, damaging and injuring the same, to plaintiffs' damage and injury in the sum of ~~Two Hundred Fifty Dollars ($250.00).~~ One Thousand ($1,000.00) [93]

III.

That at all of the times herein mentioned, plaintiffs were observing due and proper care and caution, and were guilty of no contributory fault, and that the negligence, carelessness and recklessness of defendant as herein alleged was the sole proximate cause of said accident and injuries.

WHEREFORE, plaintiffs pray judgment against
One Thousand ($1,000.00)
defendants in the sum of ~~Two Hundred Fifty Dollars ($250.00),~~ and for costs of suit.

ANDERSON & GALE,
Attorneys for Plaintiffs.

Amended by Court order Nov. 5, 1927.

KITTY R. CROSSMAN,
Clerk.
By Emma Shull,
Deputy.

(Filed July 18, 1927.)

(Title of Court and Cause.)

DEMURRER AND ANSWER.

Comes now the defendant and demurs to the complaint upon the following grounds:

That the purported first cause of action therein does not state facts sufficient to constitute a cause of action against the defendant.

That the purported second cause of action therein does not state facts sufficient to constitute a cause of action against the defendant.

WHEREFORE, defendant prays that the complaint be dismissed and for his costs of suit herein.

SLOAN, HOLTON, McKESSON & SCOTT,
Attorneys for Defendant.

Should the foregoing demurrers, or either or any of them be overruled, but without waiving the same or any of them, defendant answering said complaint, admits, denies and alleges as follows:

Denies all and singular each and every allegation in said [94] complaint contained.

SLOAN, HOLTON, McKESSON & SCOTT,
Attorneys for Defendant.

(Filed Aug. 8, 1927.)

(Title of Court and Cause.)

COURT'S INSTRUCTIONS TO THE JURY.

Gentlemen of the Jury, it now becomes my duty to instruct you regarding the law governing this case. The pleadings were read to you at length. I will not repeat them but merely state the substance.

It is alleged in the complaint that the plaintiffs, on or about the second day of July were driving an automobile in a careful, lawful, and prudent manner, north on Grove Street; and that the defendant, coming in the opposite direction in his automobile, travelling at an excessive and unlawful rate of speed, to wit: at the speed of about fifty or sixty miles an hour, carelessly, negligently, recklessly, and with disregard for the rules and regulations and the laws of the State of Arizona, swaying from side to side and out of control of his car, ran into the car of the plaintiffs while the plaintiffs' car was standing still on the extreme right side of the street thereby damaging the plaintiff, Mrs. Clark, severely about her face, arms, head, and body; and also damaging the plaintiff, Mr. Clark, inflicting various bruises and injuries; that at the time of the accident the plaintiff, Etta Clark, was afflicted with tuberculosis, and that this accident deprived

her of a large part of the benefit, care, and attention she had theretofore received, and caused her disease to become more active; and that by reason of these facts the plaintiffs have suffered damages in the sum of fifteen thousand dollars; and at all times mentioned the plaintiffs were in the exercise of due care and caution and were not guilty of any contributory negligence. [95]

In the second cause of action the accident is described in about the same way, and the injuries are described as being the same; but it is further alleged that at the time of the accident that the defendant was intoxicated, and that he wantonly, culpably, and with utter disregard of the consequence to life and limb of plaintiffs, drove into the automobile of the plaintiffs, alleging gross negligence. The amount of actual damage claimed in the second cause of action is the same as that in the first, and in addition punitive damages, which I will later define to you, in the sum of five thousand dollars, are asked.

To this complaint the defendant has filed an answer denying all of the allegations of the complaint.

The burden of proof, Gentlemen, is upon the plaintiff to establish the material allegations of his complaint to your satisfaction by a preponderance of the evidence.

You are instructed that a preponderance of the evidence means the greater weight of the evidence. But this is not to be determined solely by the greater number of witnesses testifying in relation

to any particular fact or state of facts. It means that the testimony *on* the party on whom the burden rests must have greater weight in your estimation —have a more convincing effect, then that opposed to it.

You are made by law, Gentlemen, the sole judges of the facts in this case, and of the credibility of each of the witnesses who have testified in the case, and of the weight you will give to their testimony. In determining the credibility and weight you will give their testimony, you have a right to take into consideration their manner and appearance while giving their testimony, their means of knowledge, any interest or motive which they have, if any, and the probability or improbability of the truth of their statements when taken into consideration with the other evidence in the case. [96]

If you believe that any witness has wilfully sworn falsely to any material fact in this case, you are at liberty to disregard all of the testimony of such witness except in so far as it has been corroborated by other credible testimony or supported by other evidence in the case.

You are instructed that if you believe from the evidence in this case that the defendant violated the statutory road law of the State of Arizona, in any particuluar, as hereinafter set forth in these instructions, that such violation is negligence *per se,* and if such negligence was the proximate cause of the injury, then I charge you that the plaintiffs can recover.

The proximate cause of an event is that which is in a natural and continuous sequence, unbroken by any new cause, produces the event. The sequence must be a natural and probable sequence as distinguished from a possible sequence. Natural and probable mean that that which can be foreseen because it happens so frequently that it may be expected to happen again.

The Court instructs the jury as a matter of law that the gist of this action and the foundation of the same is the alleged negligence of the defendant.

You are further instructed that negligence is the want *or* ordinary care; and ordinary care is that degree of care which ought reasonably to be expected from a person of ordinary prudence in view of the circumstances developed in the evidence. Ordinary care is such care as an ordinarily prudent person would exercise under the same or similar circumstances. Negligence consists of the doing or the failure to do anything which a reasonable man, guided by those ordinary considerations which regulate human affairs, would do or fail to do under such circumstances.

The Court instructs the jury that a person of such age and experience as to be capable of exercising discretion, and of appreciating the risks and dangers of driving an automobile upon [97] such a road as has been described in this evidence, must be responsible for any injury which might be inflicted by his inattention to his surroundings and failure to take due precaution against known or obvious dangers.

And I charge you as a matter of law that the defendant, George Ross, in this case is such a person of such age and experience as to be capable of exercising discretion and of appreciating the risks and dangers of driving an automobile upon such a road as has been described in this evidence, and it was his duty to exercise attention to his surroundings and to take care and caution, and if he fails so to do, then he is responsible for any resulting accident or injury.

I instruct you as a matter of law that the place where this accident happened is a public highway and street, within the contemplation of the laws of the State of Arizona, and that plaintiffs had a right to use the same; and that it was the duty of the defendant to use said highway with due care, regard and consideration for the rights of others.

And I charge you as a matter of law that it was the duty of the defendant in this case, as a driver of a motor vehicle upon the public highway, to proceed with attention, care and caution, and with due regard for the rights of other persons upon said highway, under all the facts and circumstances shown in the evidence, in order to avoid accident *an* injury to others; that it was his duty to know that plaintiffs and others had a right to be upon said highway, and to make lawful use of the same.

I charge you as a matter of law that no person shall operate a motor vehicle on a public highway at a rate of speed greater than is reasonable and proper, having regard to the traffic and use of the highway; and if you find from the evidence in this

case that the defendant was operating his automobile at a rate of speed greater than was reasonable and proper, or in any [98] manner that was unreasonable and improper, and that such operation was the proximate cause of the injury, then I charge you as a matter of law that he is guilty of negligence, and if such negligence cause the injury complained of, defendant is responsible.

I further charge you that the motor vehicle law of Arizona provides a maximum limit for the speed of automobiles in cities, towns, and upon the public roads, and that it is a violation of the law to operate an automobile at a greater speed than these limits. I have given you these limits in another instruction.

You are instructed that the plaintiffs in this case, as well as all travelers on the public highways, had a right to assume that other travellers would observe the law of the road and obey all regulations and statutes relative to the use of the highway and in general exercise reasonable care to avoid injury to themselves or their fellow travellers.

One traveller is not the insurer of the safety of others. All travellers must exercise reasonable care to protect their own safety as well as to avoid injury to others; and the fact if it is a fact from the evidence in this case, that the defendant was a taxi driver gave him no greater rights or privileges upon the highway then the plaintiffs.

And I charge you as a matter of law that plain-

they had not complied with all the rules and regulations relative to securing a permit for the operation of their car, which was duly licensed in the State of California.

I charge you that if you believe from the evidence that the accident alleged in the complaint and mentioned in the evidence resulted from or was caused by the negligence or want of ordinary care, on the part of the defendant, then you must find in favor of the plaintiffs for such sum as you consider will reasonably compensate them for the damage and injuries sustained, [99] if you further find that said negligence or want of care was the proximate cause of the injury; and in arriving at the amount of your verdict you have a right to take into consideration the mental and physical shock to plaintiff, Etta Clark, physical pain and anguish, as well as the physical injuries sustained; and if you believe from the evidence that plaintiff, Etta Clark, was in ill health at the time of said accident, you have a right to take into consideration in arriving at the amount of your verdict any loss or detriment to her health or physical well-being and the extent to which you believe from the evidence her recovery from sickness or disease has been retarded by the physical and mental shock and injuries and fright suffered or sustained by her as a result of said accident.

I charge you it is the duty of persons driving automobiles upon the public highways of the state to drive carefully and with due regard for the rights and safety of other persons upon said high-

ways; to conform to the traffic laws, rules and regulations in the matter of speed and care in the operation of automobiles upon said highways; that it is the duty of such persons to drive reasonably and carefully, and upon the right-hand side of the road or street.

You are further instructed that if you believe from a preponderance of the evidence in the case that defendant, George Ross, drove his said automobile, as alleged in the complaint, carelessly, negligently and without due regard for the rights and safety of plaintiffs and other persons lawfully travelling upon said highway, at a rate of speed in excess of the lawful rate, as I have herein charged you; or if you find from the evidence that defendant diverted from his proper course on the right-hand side of the road or street upon which he was driving and struck the car of plaintiffs on their own proper side, either of said facts constitutes negligence *per se,* and you must find in [100] favor of the plaintiffs. By the term "negligence *per se*" is meant an act of negligence which is negligence in itself, and does not depend upon the surrounding circumstances of the case nor upon the relative situations of the parties.

I further charge you that if you believe from the evidence that the accident in this case resulted from or was caused by the wilfulness or wanton disregard by defendant of the consequences of his acts, or by gross or extreme negligence, whether you find the defendant was intoxicated at the time or not, you are entitled to take those facts into

consideration in arriving at the amount of your verdict, and to add to such amount as you may find as will reasonably compensate plaintiffs for their damage and injuries an additional amount as punitive or exemplary damages by way of punishment for such acts of wilfulness, wanton disregard, or gross negligence of defendant.

If you find in favor of the plaintiffs and find that the defendant was guilty of ordinary negligence only, then the measure of damages in favor of plaintiffs in such an amount as will constitute a just and reasonable compensation for the loss sustained, taking into consideration the mental pain and anguish and suffering, as I have heretofore charged you; not to exceed the amount prayed for in the complaint, to wit: the amount in the first cause of action.

On the other hand, if you find that the defendant was guilty of gross negligence, as the same has been defined to you, then you have a right to assess an additional amount as punishment for such injuries inflicted by such gross negligence, or the wanton disregard of the rights of others. And if you find from the evidence in this case that the defendant was guilty of negligence to such a degree that manifested a wanton disregard of the lives and safety of others, then you can give such an additional amount in the way of punitive or exemplary damages, in [101] addition to the amount you find under the first cause of action, but not exceeding the sum prayed for as punitive damages in the complaint under the second cause of action.

I charge you, Gentlemen of the Jury, that both of the parties to this case have admitted in open court that the state law relative to the rate of speed per hour shall govern in the City of Prescott; and I charge you that said law provides that the maximum rate of speed in urban streets shall not exceed fifteen miles per hour; and I charge you that it is admitted by the evidence in this case without dispute that where this accident happened was within the city limits of the City of Prescott.

The Court instructs the jury that the charge of negligence made by plaintiffs against defendant by this action must be proved to the satisfaction of the jury by a preponderance of the evidence. The jury has no right to presume negligence; and if the evidence does not preponderate in favor of plaintiffs, then the verdict shall be for the defendant.

The Court instructs the jury that negligence is never to be presumed; and the fact that an accident occurred does not justify the jury inferring from that fact that it was caused by the negligence of the defendant.

I charge you, Gentlemen of the Jury, that it is the duty of every person operating an automobile on the public highways of the state to operate the same with due regard for the rights of others upon said highways, and in a careful and prudent manner, and that this rule of law applies to the plaintiffs in this case as well as the defendant. And I further charge you that if you find from the evidence in this case that the plaintiffs failed to ob-

serve such rule and did at the time of the accident operate said automobile in a careless or reckless manner, and that such carelessness or negligence contributed in causing the accident and that such negligent act on the part of the plaintiffs, [102] or either of them, was the proximate cause, then the plaintiffs cannot recover.

To express the same thought in different language, if the accident would not have occurred but for some negligent act upon the part of the driver of the plaintiffs' automobile, then plaintiffs cannot recover.

You are further instructed that even though you should find that the defendant at the time of the accident complained of was guilty of some act or acts of negligence which caused the accident complained of, nevertheless, if you further find that the plaintiff, L. A. Clark, who was operating plaintiffs' automobile, was himself guilty of negligence, and that such negligence on his part contributed to bring about the accident and that without such negligence the accident would not have happened, then and in that event plaintiffs cannot recover, and your verdict must be for the defendant.

Now, Gentlemen, forms of verdict have been prepared and will be submitted to you for your consideration.

If under the evidence and the instructions of the Court you find that the plaintiffs are entitled to recover for their actual damages under the first cause of action, first and second causes of action, the form of your verdict will be as follows:

"We, the jury, duly empanelled and sworn in the above-entitled action, upon our oaths do find in favor of the plaintiffs and assess their actual damages at the sum of blank dollars," and setting whatever amount you find.

Under the second cause of action, if you find in addition to the actual damages that the plaintiffs are entitled to recover punitive damages, as I have heretofore defined that term to you in the above instructions, the form of your verdict will be as follows: [103]

> "We, the jury, duly empaneled and sworn in the above-entitled action, upon our oaths do find the issues herein in favor of the defendant."

You are instructed, Gentlemen, in this as in all civil cases, the concurrence of nine or more jurors is sufficient to render a verdict therein. In all such cases where the jury unanimously agrees upon the verdict, the verdict should be signed by your foreman. However, if nine or more and less than twelve agree, then your verdict should be signed by all of those who agree upon such verdict.

At the close of the argument you will retire to your jury-room, select a foreman from among your number, and proceed to the consideration of your verdict.

INSTRUCTIONS REQUESTED BY THE DEFENDANT AND GIVEN AS MODIFIED BY THE COURT.

IV.

~~You are instructed that the plaintiffs in this case may not recover if they or either of them were guilty of contributory negligence in the operation of their automobile at the time of the accident.~~ To express the same thought in different language, if the accident would not have occurred but for *the* some negligent act upon the part of the driver of the plaintiffs' automobile, then plaintiffs cannot recover.

Given as modified.

RICHARD LAMSON,
Judge.

V.

You are further instructed that even though you should find that the defendant at the time of the accident complained of was guilty of some act or acts of negligence which caused the accident complained of, nevertheless if you further find that the plaintiff L. A. Clark, who was operating plaintiffs' [104] automobile, was himself guilty of negligence, and that such negligence on his part contributed to bring about the accident, *and that without such negligence such accident would not have happened* then and in that event plaintiff cannot recover and your verdict must be for the defendant.

Given as modified.

RICHARD LAMSON,
Judge.

(Words in italics are those added by the Court.)
(Filed November 9, 1927.)

(Title of Court and Cause.)

VERDICT.

We, the jury, duly empaneled and sworn in the above-entitled action, upon our oath, do find: In favor of plaintiffs and assess their actual damages at the sum of $12,000.00.

ROY PRATHER,
Foreman.

(Filed November 9, 1927.)

(Title of Court and Cause.)

VERDICT.

We, the jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find: in favor of plaintiffs and in addition to their actual damages assess $3,000.00 as punitive damages defendant.

ROY PRATHER,
Foreman.

(Filed November 9, 1927.)

(Title of Court and Cause.)

JUDGMENT.

This cause came on regularly for trial on the 5th day of November, 1927, before the Honorable Richard Lamson, Judge of the above-entitled

court, upon the complaint of the plaintiffs and answer of defendant, plaintiffs appearing in person and by their counsel, Messrs. Anderson and Gale, defendant being present [105] in person and by his counsel, J. E. Russell, Esquire, and Messrs. Sloan, Holton, McKesson & Scott;

Thereupon, a jury of twelve good and lawful men was duly and regularly empaneled and sworn to well and truly try the issues, and both parties announcing ready the Court proceeded to hear and try the cause;

Thereupon, and on the 7th, 8th and 9th days of November, 1927, evidence was introduced by both parties in support of the allegations of their respective pleadings, and subsequently, to wit: on the 9th day of November, 1927, the Court having duly instructed the jury upon the law, and counsel for the respective parties having argued the cause to the jury, the jury retired to consider of their verdict, and subsequently, to wit: on the 9th day of November, 1927, the jury returned into open court their two certain verdicts finding the issues in favor of plaintiffs and fixing their actual damages at the sum of Twelve Thousand Dollars ($12,000.00), and awarding punitive damages in the amount of Three Thousand Dollars ($3,000.00), together with costs of suit, said verdicts being respectively in the following form:

> "We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do

find: in favor of plaintiffs and assess their actual damages at the sum of $12,000.00.

(Signed) ROY PRATHER,
Foreman."

"We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find: in favor of plaintiffs and in addition to their actual damages assess $3,000.00 as punitive damages against the defendant.

(Signed) ROY PRATHER,
Foreman."

And said verdicts having been duly and regularly received and recorded, on motion of counsel for plaintiffs,— [106]

IT IS ORDERED, ADJUDGED AND DECREED that plaintiffs, L. A. Clark and Etta Clark, his wife, do have and recover of and from defendant, George Ross, the sum of Fifteen Thousand Dollars ($15,000.00), together with interest thereon from the date hereof until paid at the rate of six per cent per annum, and together also with their costs assessed at the sum of $196.35, and that execution do issue therefor in favor of plaintiffs; and

IT IS FURTHER, ORDERED, ADJUDGED AND DECREED that the jury fee herein be and the same is hereby fixed at the sum of $216.00, and that the same be, and it is hereby assessed directly against defendant, George Ross, and that execution therefor do issue in favor of the County of Yavapai, State of Arizona.

Done in open court this 9th day of November, 1927.

(Signed) RICHARD LAMSON,
Judge.

(Filed November 15, 1927.)

[Endorsed]: Bill of Exceptions. Settled and Allowed. Filed Dec. 17, 1928. [107]

[Title of Court and Cause.]

PETITION FOR APPEAL.

The above-named defendant, General Accident, Fire & Life Assurance Corporation, Ltd., a corporation, feeling itself aggrieved by the judgment made and entered in this cause on the 28th day of August, A. D. 1928, does hereby appeal from said judgment to the Circuit Court of Appeals for the Ninth Circuit for the reasons specified in its assignment of errors filed herewith, and prays that its appeal be allowed and that citation issue as provided by law and that a transcript of the record, proceedings and papers upon which said judgment was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California.

And your petitioner further prays that the proper order touching the security required of it to perfect its appeal be made, and desiring to supersede the execution of said judgment petitioner herewith tenders bond in such amount as the Court may re-

quire for such purpose and prays that with the allowance of the appeal a supersedeas be issued.

SLOAN, HOLTON, McKESSON, & SCOTT,
Attorneys for Defendant, General Accident, Fire & Life Assurance Corporation, Ltd. [108]

ORDER ALLOWING APPEAL AND FIXING AMOUNT OF BOND.

The above petition granted and the appeal allowed upon giving a bond, conditioned as required by law, in the sum of Eleven Thousand Five Hundred Dollars ($11,500.00).

Dated this 27th day of November, A. D., 1928.

F. C. JACOBS,
Judge United States District Court for the District of Arizona.

[Endorsed]: Filed Nov. 27, 1928. [109]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Comes now the General Accident, Fire & Life Assurance Corporation, Ltd., a corporation, defendant in the above-entitled cause, and in connection with its petition for appeal makes the following assignment of errors which it avers occurred upon the trial of said cause or were committed by the Court in the rendition of the judgment, or in the prior proceedings in said cause.

FIRST.

The Court erred in overruling and denying defendant's plea in abatement herein upon the grounds and for the reasons following, to wit:

That the complaint seeks to enforce as against the defendant herein under the indemnity clause of a certain policy of indemnity insurance issued to one George Ross, defendant in an action in the Superior Court of Yavapai County, Arizona, a judgment alleged to have been rendered and entered therein in the amount of $15,000 against said Ross for damages arising out of an automobile accident in which the automobile alleged to have been covered by said insurance policy was involved. That the right of the plaintiffs to claim under said insurance policy arises solely out of a special rider or clause [110] attached to said policy providing that said policy should inure to the benefit of any and all persons suffering loss or damage, which right was under the terms of said clause, conditioned upon the recovery by said person of a final judgment against the person assured in said policy of indemnity insurance, namely George Ross.

If judgment was recovered against Ross as alleged in plaintiffs' complaint, nevertheless the defendant contends that such judgment has not become a final judgment as contemplated by the clause or rider attached to said policy. The defendant set up in its plea in abatement and proved that from the judgment of the Superior Court of Yavapai

County, Arizona, an appeal to the Supreme Court of the State of Arizona had been duly and regularly perfected and was at the time of the trial of said plea in abatement pending in said Supreme Court. Defendant contends that the purport and intent of the special rider or clause attached to the indemnity insurance policy is that in the event the injured person shall have recovered a final judgment in which all of the issues of the case have been finally and conclusively adjudicated, then and in that event only may such injured claim that benefit of the indemnity clause in said insurance policy and avail himself thereof. That the Court should, upon the proof of the pendency of said appeal, have granted the plea in abatement abating and staying this action until a final determination of the issues involved in said appeal pending before said Supreme Court of the State of Arizona, and erred in refusing so to do.

SECOND.

The Court erred in refusing defendant leave to file its amended demurrer and answer, which said amended demurrer and answer did, in addition to the defenses set up [111] in the original demurrer and answer, demurred to the complaint upon the ground that there were several causes of action improperly united, and did set up in said amended answer, in addition to the defenses set up in the original answer, the following defenses:

"I.

That the policy of insurance herein referred to

contained, among other things, the following provision:

'GENERAL ACCIDENT
Fourth and Walnut Sts.
Philadelphia.

ARIZONA COMMON CARRIER ENDORSEMENT.

Not Valid Unless Countersigned by a Duly Authorized Representative of the Corporation.

In consideration of the premium at which this policy is written and in further consideration of the acceptance by the Arizona Corporation Commission of this policy as a compliance with Orders No. ——, it is understood and agreed that regardless of any of the conditions of this policy, same shall cover passengers as well as other persons, and shall inure to the benefit of any or all persons suffering loss or damage, and suit may be brought thereon in any court of competent jurisdiction within the State, by any person, firm, association or corporation suffering any such loss or damage, if final judgment is rendered against the assured by reason of any loss or claim covered by this policy, the Corporation shall pay said judgment up to the limits expressed in the policy direct to the plaintiff securing said judgment, or the legal holder thereof, upon the demand of said plaintiff or holder thereof, whether the assured be or be not financially responsible in the amount of said judgment and that this policy may not be cancelled by either party except that written notice of the same shall

have been previously given for at least ten days prior to the cancellation of such policy. PROVIDED, however, that no person suffering loss or damage, either to person or property, shall be entitled to avail himself of the benefits of this endorsement and rider to the policy unless within 20 days from the date of suffering said loss or damage he shall serve written notice thereof upon the representative of the General Accident Fire & Life Assurance Corporation, Limited, at its office at Phoenix, Arizona.

It is further understood and agreed that this policy does not cover injuries or death to any employee of the assured, coming within the scope of the Workman's Compulsory Compensation Law, Chapter 7, Title XIV, Revised Statutes of 1913; originally Chapter 14, Laws of 1912, special session and codified by Chapter 7, Laws of 1913, Fourth Session. [112]

In all other respects the terms, limits and conditions of this policy remain unchanged.

Attached to and forming part of Policy No. 574373 issued to the GENERAL ACCIDENT, FIRE AND LIFE ASSURANCE CORPORATION, LIMITED, of Perth, Scotland, to George Ross, Prescott, Arizona.

Countersigned at Phoenix, Arizona.

Date February 5th, 1927.

THE STANDARD AGENCY INC.

M. KINGSBURY, Agent.

FREDERIC W. RICHARDSON,

United States Manager.

II.

That this defendant has received no written notice from the plaintiffs, or either of them, within twenty days from the date of suffering said loss or damage, if any, as is provided in said indorsement, or at all, claiming any loss or damage under said policy or any policy issued by this defendant.

As a further and separate defense to said action defendant alleges:

I.

That said policy of insurance heretofore referred to contained, among others, the following provision:

'STATEMENT 8: Regardless of the number of the assured involved, the Corporation's liability for loss from an accident resulting in bodily injuries to or in the death of one person is limited to Five Thousand Dollars ($5,000.00), and, subject to the same limit for each person, the Corporation's total liability for loss from any one accident resulting in bodily injuries to or in the death of more than one person is limited to Ten Thousand Dollars ($10,000.00).'

II.

That under said provision the limit of liability of this defendant to any person for injuries sustained arising out of any one accident is the sum of Five Thousand Dollars ($5,000.00). As to whether the plaintiffs herein, or either of them, were injured in an accident occasioned by the automobile covered by said policy of insurance herein referred to, or the extent or amount of injuries, if any, to said plaintiffs, or either of them, this defendant is without

information upon which to base a belief and therefore denies that said plaintiffs or either of them, were injured in any accident covered by said policy herein referred to."

The defendant charges error upon the following grounds and for the following reasons, to wit: For the reason that said amended demurrer and answer set up grounds of demurrer and matters [113] of defense not contained in said original demurrer and answer. That by refusing to permit the filing of said amended demurrer and answer the defendant was deprived of a substantial right.

THIRD.

The Court erred in receiving in evidence Plaintiffs' Exhibit No. 1, said exhibit purporting to be a copy of the printed Abstract of Record in the Supreme Court of the State of Arizona in the appeal of cause No. 10580 from the Superior Court of the County of Yavapai, State of Arizona, over the objection of defendant that the same was incompetent, irrelevant and immaterial and did not contain the original nor any copy of the pleadings or judgment in said cause No. 10580, certified to under the hand and seal of the lawful possessor of such records as required by the statutes of the State of Arizona as a prerequisite to their admission as evidence of the contents thereof, and that said Exhibit 1 was not the best evidence or any competent evidence of the matters and things attempted to be shown thereby and did not conform to the law with reference to the manner and mode of proving official documents and court records within the State

of Arizona. Defendant assigns the foregoing as error for the following reasons and upon the following grounds, to wit: That the proof of the judgment and pleadings in said cause No. 10580 was essential to a recovery in the case at bar and that said instrument so admitted in evidence did not constitute any proof thereof.

FOURTH.

The Court erred in receiving in evidence over the objection of the defendant, a policy of insurance written by the General Accident, Fire & Life Assurance Corporation, designated as Plaintiffs' Exhibit No. 2, which said policy of insurance did by its terms agree to indemnify one George Ross, of the Town of Prescott, County of Yavapai, State of [114] Arizona, for the period beginning February 5, 1927, and ending December 31, 1927, on account of damages sustained by persons other than employees by reason of the ownership, maintenance or use of one certain automobile alleged to be owned by said Ross, known as a Paige 5 Passenger, 6 Cylinder Sedan, built in the year 1926, Motor No. 417333, Serial No. 409495, for the reason that no proper foundation had been laid for the reception of said document in evidence in that it had not been shown that the automobile described in said policy was the automobile referred to in plaintiffs' complaint.

FIFTH.

The Court erred in receiving in evidence upon the trial an instrument designated Plaintiffs' Exhibit No. 3 over the objection of the defendant, which

said instrument was in words and figures as follows, to wit:

"July 7th, 1927.

Mr. B. F. Hunter,
c/o Standard Accident Ins. Co.,
Phoenix, Arizona.

Dear Mr. Hunter:—

I have further investigated the Clark-Ross automobile collision, and Mrs. Clark is really in a bad way. There were reports current on the street last night that she had died, but this, I find this morning, to be untrue. However, she is running a very high temperature, with frequent hemorrhages, and it is quite apparent that she is going to have a bad time of it.

They had very high opinions as to what they should recover and want me to file suit for Fifteen Thousand Dollars. I believe there is a better chance to settle now than any other time because the woman is seriously ill. She is really in bad shape from her disease, as well as the accident. I believe if you will make me a firm offer of Twenty Five Hundred Dollars ($2500.00) I can get a settlement out of them, for both. This not to include anything for the automobile,—simply to cover the personal injury to Clark and Mrs. Clark, their doctor and medical attendants. This is the very best that I can possibly hope to do, and if we cannot get together on that basis, as reluctant as I am to bring suit against you, I will have to file suit against Ross for the Fifteen Thousand Dollars, and

I think the chances of getting substantial verdict against him is very good.

Please let me know at your early convenience. [115]

Very truly yours,
ANDERSON & GALE.
By ————————.

LA–c.

Plts. Exhibit No. 3. Marked for Identification Only. Case No. Law—272—Pct.

Pltfs. Exhibit No. 3. Admitted and filed Aug. 20, 1928. C. R. McFall, Clerk. By Paul Dickason, Chief Deputy Clerk. Case No. Law—272—Prescott. Clark vs. General Accident."

Error is assigned upon the admission of the foregoing instrument in evidence upon the ground and for the reasons following, to wit: That said letter did not show or purport to show that B. F. Hunter was an accredited agent, or any agent of the defendant company upon whom written notice could be served as required in the policy of insurance sued upon herein and that said letter did not constitute notice to defendant company as provided by the terms of said policy and was, therefore, incompetent, irrelevant and immaterial.

SIXTH.

That the Court erred in receiving in evidence upon the trial hereof, as Plaintiffs' Exhibit No. 4, over the objection of the defendant, the following letter:

Fire
Automobile
Public Liability
Plate Glass
Burglary
Elevator

Workmen's Compensation
Accident and Health
Fidelity and Surety Bonds

"THE STANDARD AGENCY INC.

Formerly Carl H. Anderson Insurance Agency.
General Agents

INSURANCE AND SURETY BONDS.

Phoenix, Arizona. [116]

July 11, 1927.

Adams Hotel Bldg. 16 E. Adams St.
Telephone 23101.

Mr. Leroy Anderso*y*
Prescott, Arizona.

Dear Mr. Anderson:

Re: Clark-Ross Collision.

Thanks for your prompt letter of the 7th inst. with reference to the above matter. We note, with regret, that Mrs. Clark is running a high temperature and has frequent hemorrhages, but wonder whether these conditions are attributable to the accident and whether they did not exist even prior to the accident.

We sincerely trust that the suit referred to by you will be withheld, at least until we have had an opportunity to perhaps more fully acquaint ourselves with her present condition and to what extent her present condition is attributable to the accident. We note that you are inclined to be entirely rea-

sonable in the matter, but we do feel from the information at present in hand, that $2500. would be out of proportion to the injury. May we ask your consent to communicating with Dr. Flynn for a full and complete report along the above lines, when we will likely be in a position to advise further concerning the $2500. offer.

Yours very truly,
STANDARD AGENCY, INC.
By B. F. HUNTER.
By B. F. HUNTER,
Adjuster.

BFH:PW.

Pltfs. Exhibit No. 4. Marked for Identification Only. Case No. Law—272—Pct.

Pltfs. Exhibit No. 4. Admitted and filed Aug. 20, 1928. C. R. McFall, Clerk. By Paul Dickason, Chief Deputy Clerk. Case No. Law—272—Pct. Clark vs. General Accident."

Error is charged upon the reception of said letter in evidence upon the following grounds and for the following reasons, to wit: That said letter did not show or purport to [117] show that the said B. F. Hunter was an accredited agent or representative, or any agent or representative of the defendant company upon whom written notice could be served as required in the policy of insurance sued upon, and that no evidence whatever had been introduced by plaintiff that said B. F. Hunter was in truth and in fact an agent of the defendant corporation authorized to represent or bind said de-

fendant corporation in any manner whatsoever, and that said letter was wholly irrelevant and immaterial and was not competent evidence of any fact material to the issues of this case.

SEVENTH.

The Court erred in denying defendant's motion made at the close of plaintiffs' case to strike Plaintiffs' Exhibit No. 1, said exhibit purporting to be a copy of the printed Abstract of Record in the Supreme Court of the State of Arizona in the appeal of cause No. 10580 from the Superior Court, County of Yavapai, State of Arizona. Error is charged upon the following grounds and for the following reasons, to wit: That the offer of said exhibit was for the avowed purpose of proving the judgment and pleadings in cause No. 10580 in the Superior Court of the County of Yavapai, State of Arizona. That said exhibit was not nor did it purport to be a true copy of said pleadings and judgment, certified to by the officer having the custody and charge thereof. That said exhibit did not constitute competent evidence tending to prove or disprove any issue in this case.

EIGHTH.

The Court erred in overruling defendant's demurrer to the evidence at the close of plaintiffs' case, that is to say, defendant's demurrer that the evidence and all of it introduced by plaintiffs in support of their complaint failed to [118] prove facts sufficient to entitle the plaintiffs to a judgment under their complaint. The defendant charges that such ruling was erroneous for the fol-

lowing reasons and upon the following grounds, to wit: That the evidence at the close of plaintiffs' case wholly failed to show that the automobile concerned in the accident complained of in said cause No. 10580 was the identical automobile designated and described in the policy of insurance sued upon in this action. That the evidence at the close of plaintiffs' case wholly failed to show the performance of the condition named in the rider or endorsement upon the insurance policy sued upon, that is to say, that the person suffering loss or damage in order to avail himself of the benefits of said policy and endorsements thereon, should within twenty days from the date of suffering said loss or damage serve written notice thereof upon the representative of the General Accident, Fire & Life Assurance Corporation, Ltd., at its office at Phoenix, Arizona. That there was wholly lacking in the evidence any proof of the performance of the condition above set forth.

NINTH.

The Court erred in overruling defendant's demurrer made at the close of plaintiffs' case that it appeared from the evidence that there were two causes of action improperly united in the complaint. Error therein is charged upon the following grounds and for the following reasons, to wit: That the policy of insurance sued upon herein in express language provided as follows:

"STATEMENT 8: Regardless of the number of the assured involved, the Corporation's liability for loss from an accident resulting in bodily injuries

to or in the death of one person is limited to Five Thousand Dollars ($5,000.00), and, subject to the same limit for each person, the Corporation's total liability for loss from any one accident resulting in bodily injuries to or in the death of more than one person is limited to Ten Thousand Dollars ($10,000.00). [119]

That it appeared from the evidence that the plaintiffs were claiming in one cause of action damages for personal injuries to two separate persons, namely, L. A. Clark and Etta Clark, his wife. That under the foregoing facts there were two causes of action improperly united in a single cause of action.

TENTH.

The Court erred in denying defendant's motion made at the close of plaintiffs' case for judgment in favor of the defendant and against the plaintiffs. Error is predicated therein upon the following grounds and for the following reasons, to wit: The evidence at that state of the case failed to show what, if any, amount each of the plaintiffs was entitled to recover. The injuries complained of were not shown to have been caused by the automobile described in the policy of insurance sued upon in this action. That two causes of action were improperly united in that the policy of insurance introduced in evidence did not give the right to plaintiffs to recover jointly but limited each to the amount of his or her injury, but not to exceed Five Thousand Dollars ($5,000.00) each, and there was no showing as to what damages were sustained by each of said plaintiffs. That the plaintiffs wholly failed

to establish by the evidence the facts necessary to entitle them to recover under the terms of the policy upon which they were suing.

ELEVENTH.

That the Court erred in sustaining the objection of counsel for plaintiffs to the following question asked of defendant's witness J. E. Russell, concerning certain statements alleged to have been made by LeRoy Anderson, counsel for plaintiffs, in his argument to the jury in cause No. 10580 in the Superior Court of Yavapai County, Arizona: [120]

(By Mr. HOLTON.)

Q. I will ask you whether you recall Mr. Anderson, attorney for the plaintiffs, making any statement in his argument to the jury with respect to the amount of damages for Mr. Clark? To the best of your recollection will you testify and tell the Court what that statement was?

Error is predicated upon the following grounds and for the following reasons, to wit: That counsel for the defendant did following such question avow that he intended to prove by the witness Russell that Mr. Anderson, attorney for the plaintiffs in cause No. 10580 in the Superior Court of Yavapai County, Arizona, in his argument to the jury, said in substance, that he was claiming no damages on behalf of Mr. Clark in that action. That defendant, as throwing light upon the right of the Court to allow damages for personal injuries to L. A. Clark under the policy of insurance sued upon herein, had a right to show that no claim was made in said cause No. 10580 for such damages and that

if the plaintiff L. A. Clark was injured in any manner whatsoever the plaintiffs by their counsel waived any such damages and that, as a matter of fact, no damages were awarded in said cause No. 10580 on account of personal injuries received by L. A. Clark.

TWELFTH.

The Court erred in sustaining the objection of counsel for plaintiffs to the following question asked of the defendant's witness C. R. Holton; concerning what statements were made by LeRoy Anderson, counsel for plaintiffs, in his argument to the jury in said cause No. 10580 in the Superior Court of Yavapai County, Arizona:

(By Mr. SCOTT.)

Q. What did he (Anderson) say with respect to the amount of damages claimed by Mr. Clark?

Error is predicated upon the following grounds and for the following reasons: That counsel for the defendant did avow at the time of the propounding of said question, that he [121] intended to prove by said witness that Mr. Anderson, counsel for the plaintiffs in cause No. 10580, in his argument to the jury said in substance that he was not asking for any damages for any injuries sustained by L. A. Clark in the accident concerned in said cause. That defendant had a right to show that if L. A. Clark sustained any injuries whatsoever in the accident complained of in said cause No. 10580, that he was not asking for any damages

therefor and that by the statement of his counsel made in the argument of said cause, he waived any such damages.

THIRTEENTH.

The Court erred in overruling defendant's demurrer to the evidence at the close of the case upon the ground that said evidence wholly failed to entitle plaintiffs to recover in this action. Error is predicated upon said ruling upon the grounds and for the reasons following: That the evidence in the case wholly failed to show that the automobile concerned in the accident complained of in cause No. 10580 was the identical automobile designated and described in the policy of insurance sued upon in this action. That said evidence wholly failed to show the performance of the condition named in the rider or endorsement upon the insurance policy sued upon, that is to say, that the person suffering loss or damage, in order to avail himself of the benefits of said policy and endorsements thereon, should within twenty days from the date of suffering said loss or damage, serve written notice thereof upon the representative of the General Accident, Fire & Life Assurance Corporation, Ltd., at its office at Phoenix, Arizona. That there was wholly lacking in the evidence any proof of the performance of the condition above set forth. That the evidence wholly failed to show what, if any, personal injury was received by plaintiffs or either of them. [122]

FOURTEENTH.

The Court erred in overruling defendant's de-

murrer at the close of the case that it appeared from the evidence that there were two causes of action improperly united in the complaint. Error therein is charged upon the following grounds and for the following reasons, to wit: That the policy of insurance sued upon herein in express language provided as follows:

"STATEMENT 8: Regardless of the number of the Assured involved, the Corporation's liability for loss from an accident resulting in bodily injuries to or in the death of one person is limited to Five Thousand Dollars ($5,000.00), and, subject to the same limit for each person, the Corporation's total liability for loss from any one accident resulting in bodily injuries to or in the death of more than one person is limited to Ten Thousand Dollars ($10,000.00)."

That it appeared from the evidence that the plaintiffs were claiming in one cause of action damages for personal injuries to two separate persons, namely, L. A. Clark and Etta Clark, his wife. That under the foregoing facts there were two causes of action improperly united in a single cause of action.

FIFTEENTH.

The Court erred in denying defendant's motion made at the close of the entire case for judgment in favor of the defendant and against the plaintiffs. Error is predicated upon the following grounds and for the following reasons, to wit: The evidence at that stage of the case failed to show what, if any, amount each of the plaintiffs was entitled to re-

cover. The injuries complained of were not shown to have been caused by the automobile described in the policy of insurance sued upon in this action. That two causes of action were improperly united in that the policy of insurance introduced in evidence did not give the right to plaintiffs to recover jointly but limited each to the amount of his or her injury, but not to exceed Five Thousand Dollars ($5,000.00), each, and there was [123] no showing as to what damages were sustained by each of said plaintiffs. That the plaintiffs wholly failed to establish by the evidence the facts necessary to entitle them to recover under the terms of the policy upon which they were suing.

WHEREFORE, the said General Accident, Fire & Life Assurance Corporation, Ltd., a corporation, prays that the judgment of the District Court may be recovered.

SLOAN, HOLTON, McKESSON & SCOTT,
Attorneys for General Accident, Fire & Life Assurance Corporation, Ltd., Defendant.

[Endorsed]: Filed Nov. 27, 1928. [124]

BOND.

KNOW ALL MEN BY THESE PRESENTS: That we, General Accident, Fire & Life Assurance Corporation, Ltd., a corporation, as principal, and American Surety Company, a corporation authorized to transact a surety business in the State of

Arizona, as surety, are held and firmly bound unto L. A. Clark and Etta Clark, his wife, in the full and just sum of Eleven Thousand Five Hundred Dollars ($11,500.00), to be paid to the said L. A. Clark and Etta Clark, his wife, their certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, by these presents.

DATED this 26th day of November, in the year of our Lord one thousand nine hundred and twenty-eight.

WHEREAS, lately at a District Court of the United States for the District of Arizona, at Prescott in said District, in a suit depending in said Court, between L. A. Clark and Etta Clark, his wife, and General Accident, Fire & Life Assurance Corporation, Ltd., a corporation, a judgment was rendered against the said General Accident, Fire & Life Assurance Corporation, Ltd., and the said General Accident, Fire & Life Assurance Corporation, Ltd., having obtained from said Court an order allowing appeal to reverse the judgment in the aforesaid suit, and a citation directed to the said L. A. Clark and Etta Clark, his wife, citing and admonishing them to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California.

Now, the condition of the above obligation is such, That if the said General Accident, Fire & Life Assurance Corporation, Ltd., a corporation,

shall prosecute its said appeal to effect, and answer all damages and costs if it fail to [125] make its plea good, then the above obligation to be void; else to remain in full force and virtue.

GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPORATION, LTD.

By SLOAN, HOLTON, McKESSON & SCOTT,
Its Attorneys.

AMERICAN SURETY COMPANY,
By C. F. AINSWORTH,
Resident Vice-President.

[Corporate Seal] Attest: W. K. JAMES,
Resident Assistant Secretary.

Form of bond and sufficiency of surety approved this 27th day of November, A. D. 1928.

F. C. JACOBS,
United States District Judge.

[Endorsed]: Filed Nov. 27, 1928. [126]

CITATION ON APPEAL.

United States of America,—ss.

The President of the United States, to L. A. Clark and Etta Clark, His Wife, GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's office of the United States

District Court for the District of Arizona, wherein General Accident Fire & Life Assurance Corporation, Ltd., a Corporation, is appellant, and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable F. C. JACOBS, United States District Judge for the District of Arizona, this 27th day of November, A. D. 1928.

F. C. JACOBS,
United States District Judge. [127]

RETURN ON SERVICE OF WRIT.

United States of America,
District of Arizona,—ss.

I hereby certify and return that I served the annexed citation on appeal on the therein named L. A. Clark and Etta Clark, his wife, by handing to and leaving a true and correct copy thereof with LeRoy Anderson, Attorney, and Leo T. Stack, Attorney, personally, at Prescott, Ariz., in said District on the thirteenth day of November, A. D. 1928.

G. A. MAUK,
U. S. Marshal.
By Robert V. Born,
Deputy.

[Endorsed]: Filed Dec. 1, 1928. [128]

LETTER OF SLOAN, HOLTON, McKESSON & SCOTT TO LeROY ANDERSON.

Law Offices

Richard E. Sloan
Charles R. Holton
Theodore G. McKesson
Greig Scott

Edwin D. Green

SLOAN, HOLTON, McKESSON AND SCOTT
Fleming Building
Phoenix, Arizona

November 14, 1928.

Mr. LeRoy Anderson,
Attorney at Law,
Prescott, Arizona.

Dear Sir:

At the hearing upon your objections to the Bill of Exceptions in the case of L. A. Clark and Etta Clark, his wife, vs. General Accident, Fire & Life Assurance Corporation, Ltd., being cause No. L–272 —Prescott, in the District Court of the United States for the District of Arizona, you stated that there were numerous places in the reporter's transcript of the evidence (Defendant's Exhibit 1), where evidence appeared touching upon the personal injuries suffered by L. A. Clark. In that regard the Court denied your objections numbered 11 and 14 provided that our bill of exceptions should contain all of the evidence, as shown by said transcript, relative to such personal injuries to L. A. Clark.

We have again carefully examined the reporter's transcript of the evidence and do not find any reference therein to the injuries to L. A. Clark other than those stated in our original bill of exceptions. Nevertheless, if you will designate the page and line of any such evidence in the transcript of the reporter's notes, or in the record anywhere, we will be glad to incorporate such evidence in the Bill of Exceptions.

As we were allowed ten days from last Saturday within which to file our bill of exceptions with the Court's corrections therein we would thank you to call our attention immediately to such evidence as you have in mind in order that we may incorporate it into the revised bill of exceptions.

Very truly yours,

SLOAN, HOLTON, McKESSON & SCOTT,

By C. R. HOLTON.

CRH/g.

[Endorsed]: Filed Nov. 14, 1928. [129]

Honorable F. C. JACOBS, United States District Judge, Presiding.

March, 1928, Term, at Prescott.

(Minute Entry of July 23, 1928).

[Title of Court and Cause—L.–272—Prescott.]

ORDER CONTINUING DEFENDANT'S PLEA IN ABATEMENT.

Le Roy Anderson, Esq., and Leo T. Stack, Esq., appear as counsel for the plaintiff. No counsel present for the defendant. Whereupon,

IT IS ORDERED BY THE COURT that pending matters herein are continued one week, counsel on both sides to submit briefs.

Minute Entry of July 30, 1928.

Hon. F. C. JACOBS, U. S. District Judge, Presiding.

(Court and Cause—L–272—Prescott.)

ORDER DENYING MOTION FOR JUDGMENT.

Leo T. Stack, Esq., appears as counsel for the Plaintiffs. C. R. Holton, Esq., appears as counsel for the defendant.

The plaintiffs' motion for judgment on the pleadings is by the Court ordered denied, and exceptions entered for the plaintiffs.

The defendant's plea in abatement and demurrer

are by the Court ordered continued to the next call of the law and motion calendar. [130]

Minute Entry of August 6, 1928.

Hon. F. C. JACOBS, U. S. District Judge, Presiding.

(Court and Cause—L.-272—Prescott.)

ORDER OVERRULING PLEA IN ABATEMENT, ETC.

Le Roy Anderson, Esq., and Leo. T. Stack, Esq., appear as counsel for the plaintiffs. T. G. McKesson, Esq., appears as counsel for the defendant.

The defendant's plea in abatement is argued to the Court by respective counsel, and is by the Court ordered to stand submitted and is taken under advisement.

The defendant's demurrer is presented to the Court, and is by the Court ordered overruled.

Subsequently, the Court being advised in the premises,—

IT IS ORDERED that defendant's plea in abatement is overruled and denied, and plaintiffs' motion for judgment on the pleadings herein is granted. Exceptions to said rulings of the Court are ordered saved to the defendant.

Minute Entry of August 13, 1928.

(Court and Cause—L.–272—Prescott.)

ORDER VACATING ORDER FOR JUDGMENT ON PLEADINGS.

Leo T. Stack, Esq., appears as counsel for the plaintiffs. T. G. McKesson, Esq., appears as counsel for the defendant.

The defendant's motion to vacate order for judgment on the pleadings and for leave to answer come on regularly for hearing this date. Thereupon, IT IS ORDERED by the Court that defendant's motion for order vacating order for judgment on the pleadings herein is granted, and said order for judgment on the pleadings is vacated and set aside, and

IT IS FURTHER ORDERED that defendant is allowed to file answer herein and this case is set for trial on Monday, August 20th, 1928, at the hour of ten o'clock A. M. [131]

Minute Entry of August 20, 1928.

Hon. F. C. JACOBS, U. S. District Judge, Presiding.

(Court and Cause—L.–272—Prescott.)

TRIAL.

LeRoy Anderson, Esq., and Leo T. Stack, Esq., appear as counsel for the plaintiffs. Sloan, Holton, McKesson and Scott, appear as counsel for the

defendant, this case coming on regularly for trial this date.

Written stipulation, signed by counsel for both sides waiving trial by jury, is now duly filed.

D. A. Little, Shorthand Reporter, is duly sworn to report the evidence in this case.

IT IS ORDERED that the defendant's application to file amended answer is denied, to which ruling of the Court, the defendant excepts.

PLAINTIFFS' CASE.

C. R. Holton is sworn and examined on behalf of the plaintiffs.

Exhibit No. 1, Abstract of Record, is admitted in evidence and filed on behalf of the plaintiffs.

Doroth Palmer is sworn and examined on behalf of the plaintiffs.

Exhibit No. 2, Policy of Insurance, No. 574373, is admitted in evidence and filed on behalf of the plaintiffs.

Leo T. Stack is called, sworn and examined on behalf of the plaintiffs.

Exhibit No. 3, carbon copy of letter dated July 7, 1927, is admitted in evidence and filed on behalf of the plaintiffs.

Exhibit No. 4, letter dated July 11, 1927, is admitted in evidence and filed on behalf of the plaintiffs.

Whereupon, the plaintiff rests. [132]

The defendant moves to strike Plaintiffs' Exhibit No. 1, and said motion is ordered by the Court denied, and the defendant's demurrer to the evi-

dence is overruled, to which rulings of the Court the defendant excepts.

Defendant moves for judgment in favor of the defendant and against plaintiffs, and said motion is by the Court ordered denied, to which ruling the defendant excepts.

Defendant moves that complaint be dismissed and that judgment for costs be had by defendant, and said motion is by the Court ordered denied, to which ruling of the Court the defendant excepts.

DEFENDANT'S CASE.

Exhibit "A," three volumes Transcript of Testimony, the originals to be withdrawn upon the filing of certified copies, is admitted in evidence and filed.

J. E. Russell is sworn and examined on behalf of the defendant.

C. R. Holton, heretofore sworn and examined, is now examined on behalf of the defendant.

And the defendant rests.

Defendant's motions made at the close of plaintiffs' case are now renewed, and by the Court ordered denied, and the defendant excepts to said ruling of the Court.

All the evidence being in, the case is argued to the Court by counsel for the plaintiffs, defendant submitting its case without argument, and the matter is by the Court taken under advisement, the defendant allowed five (5) days within which to file brief of authorities, and plaintiffs one (1) day thereafter to file answering brief. [133]

Minute Entry of August 28, 1928.

Hon. F. C. JACOBS, United States District Judge, Presiding.

(Court and Cause—L.-272—Prescott.)

ORDER FOR JUDGMENT.

IT IS ORDERED by the Court that order for judgment be entered herein in favor of the plaintiffs, L. A. Clark, and Etta Clark, his wife, in the sum of Ten Thousand Dollars ($10,000.00), together with plaintiffs' costs.

Minute Entry of September 5, 1928.

September, 1928, Term, at Prescott.

Hon. F. C. JACOBS, U. S. District Judge, Presiding.

(Court and Cause—L.-272—Prescott.)

ORDER RE STAY OF EXECUTION.

IT IS ORDERED by the Court that stay of execution be and hereby is granted for thirty (30) days from and after date of signing the judgment herein.

Minute Entry of September 6, 1928.

Hon. F. C. JACOBS, U. S. District Judge, Presiding.

(Court and Cause—L.-272—Prescott.)

ORDER EXTENDING TIME IN WHICH TO FILE BILL OF EXCEPTIONS.

IT IS ORDERED by the Court that defendant

be, and hereby is, granted an extension of thirty (30) days from and after this 6th day of September, 1928, in which to file bill of exceptions. [134]

Minute Entry of September 10, 1928.

April, 1928, Term, at Phoenix.

Hon. F. C. JACOBS, U. S. District Judge, Presiding.

(Court and Cause—L.-272—Prescott.)

ORDER ALLOWING WITHDRAWAL OF FILES.

IT IS ORDERED by the Court that attorneys for the defendant are allowed to withdraw Defendant's Exhibit "A" from the files of the Clerk of this Court in the above-entitled cause, upon proper receipt therefor, for a period of ten (10) days from and after this 10th day of September, 1928.

Minute Entry of September 19, 1928.

Hon. F. C. JACOBS, U. S. District Judge, Presiding.

(Court and Cause—L.-272—Prescott.)

ORDER GRANTING EXTENSION OF TIME FOR RETURN OF FILES.

On motion of Edwin Greene, Esq., IT IS ORDERED by the Court that attorneys for the defendant be permitted to retain Defendant's Exhibit "A" for five (5) additional days.

Minute Entry of November 5, 1928.

October, 1928, Term, at Phoenix.

Hon. F. C. JACOBS, U. S. District Judge, Presiding.

(Court and Cause—L.-272—Prescott.)

ORDER FIXING TIME FOR SETTLING BILL OF EXCEPTIONS (NOVEMBER 10, 1928).

IT IS ORDERED by the Court that this case is set for November 10th, 1928, at the hour of ten o'clock A. M., for the settling of the bill of exceptions herein. [135]

Minute Entry of November 10, 1928.

October, 1928, Term, at Phoenix.

Hon. F. C. JACOBS, U. S. District Judge, Presiding.

(Court and Cause—L.-272—Prescott.)

RULINGS ON BILL OF EXCEPTIONS.

Le Roy Anderson, Esq., and Leo. Stack, Esq., appear as counsel for the plaintiffs. C. R. Holton, Esq., of counsel, appears as counsel for the defendant, this being the time heretofore fixed for settlement of bill of exceptions herein, and

IT IS ORDERED BY THE COURT AS FOLLOWS:

Paragraphs One to Seven, inclusive, of bill of exceptions allowed;

Paragraphs Eight and Nine are denied;

Paragraphs Ten and Eleven are allowed;

Paragraph Twelve denied, providing plaintiffs add at the close of said paragraph, line 25, page 12, the following: "That defendant thereupon proceeded to and did introduce testimony covering its defense."

Paragraph Thirteen is allowed;

Paragraph Fourteen is denied, providing bill of exceptions is amended to include all evidence in cause 10580 of the Superior Court of Yavapai County, including reporter's notes taken therein, with reference to the nature, character and extent of the injury suffered and sustained by the plaintiff, L. A. Clark, in said cause.

IT IS FURTHER ORDERED that appellant is allowed ten (10) days from this date within which to prepare amended bill of exceptions. [136]

Minute Entry of December 10, 1928.

October, 1928, Term, at Phoenix.

Hon. F. C. JACOBS, U. S. District Judge, Presiding.

[Title of Court and Cause—No. L.–272—Prescott.]

ORDER FIXING TIME FOR SETTLING BILL OF EXCEPTIONS (DECEMBER 15, 1928).

Edwin Greene, Esq., of counsel for the defendant, is present.

IT IS ORDERED that time for hearing and settling the bill of exceptions in this case is hereby fixed for 9:30 A. M., Saturday, December 15th, 1928, this to be the last hearing for settling said bill of exceptions. [137]

[Title of Court and Cause.]

ORDER ENLARGING TIME TO AND INCLUDING JANUARY 25, 1929, WITHIN WHICH TO DOCKET RECORD ON APPEAL IN CIRCUIT COURT.

Good cause appearing therefor and on motion of attorneys for the defendant,—

IT IS HEREBY ORDERED that the time within which the defendant, General Accident, Fire & Life Assurance Corporation, Ltd., a corporation, shall docket the record on appeal of the above-entitled cause from this Court with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby extended and enlarged to and including the twenty-fifth day of January, 1929.

Dated this 17th day of December, 1928.

(Sgd.) F. C. JACOBS,

Judge, United States District Court for the District of Arizona.

[Endorsed]: Filed Dec. 17, 1928. [138]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the United States District Court for the District of Arizona:

The General Accident, Fire and Life Assurance Corporation, Ltd., a corporation, appellant, hereby indicates the following as the portions of the record to be incorporated into the transcript to be forwarded to the Circuit Court of Appeals, Ninth Circuit, on such appeal, to wit:

1. Transcript on removal from the Superior Court of Yavapai County, Arizona, filed April 23, 1928.

2. Plea in abatement and demurrer, filed May 19, 1928.

3. Motion to vacate order for judgment, filed August 9, 1928.

4. Proposed demurrer and answer, filed August 9, 1928.

5. Amended demurrer and answer, filed August 18, 1928.

6. Plaintiffs' motion to strike amended demurrer and answer, filed August 20, 1928.

7. Stipulation waiving jury trial, filed August 20, 1928. [139]

8. Judgment, filed August 28, 1928.

9. Bill of exceptions and order settling and allowing same, filed ————.

10. Petition for appeal, filed November 27, 1928.

11. Assignment of errors and prayer for reversal, filed November 27, 1928.

12. Order allowing appeal, filed November 27, 1928.

13. Supersedeas and appeal bond, filed November 27, 1928.

14. Citation on appeal showing return of service by U. S. Marshal upon attorney for plaintiffs, filed _____.

15. All minute entries in the case.

16. Copy of letter from Messrs. Sloan, Holton, McKesson & Scott to Mr. LeRoy Anderson, attorney for plaintiffs, filed November 14, 1928.

17. This praecipe.

Dated this 5th day of December, 1928.

SLOAN, HOLTON, McKESSON & SCOTT,
Attorneys for General Accident, Fire & Life Assurance Corporation, Ltd.

We, the undersigned, on behalf of our clients, L. A. Clark and Etta Clark, hereby admit and acknowledge service upon us of the above and foregoing praecipe for transcript of record, this 6th day of December, 1928.

ANDERSON & GALE,
Attorneys for Plaintiffs, L. A. Clark and Etta Clark, His Wife.

Filed Dec. 10, 1928. [140]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

United States of America,
District of Arizona,—ss.

I, C. R. McFall, Clerk of the District Court of the United States for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said United States District Court for the District of Arizona, including the records, papers and files in the case of L. A. Clark and Etta Clark, his wife, Plaintiffs, vs. General Accident, Fire and Life Assurance Corporation, Ltd., Defendant, said case being numbered 272 on the Law Docket of the Prescott Division of said Court.

I further certify that the foregoing 140 pages, numbered from 1 to 140, inclusive, constitute a full, true, and correct copy of the record and all proceedings in the above-entitled cause, as called for in the praecipe filed herein, as the same appear from the originals of record and on file in my office as such Clerk; except that the copies herein of papers included in the transcript of record on removal from Clerk of Superior Court of Yavapai County, Arizona, numbered herein as pages 1 to 23, inclusive, are copied from certified copies of same in said transcript from the Superior Court, and not from the originals of said papers. [141]

And I further certify that the cost of the foregoing transcript, amounting to Thirty-one and 15/100 Dollars, ($31.15), has been paid to me by the appellant, General Accident, Fire and Life Assurance Corporation, Ltd.

WITNESS my hand and the seal of said Court this 10th day of January, A. D. 1929.

[Seal] C. R. McFALL,
Clerk, United States District Court, District of Arizona.

By M. R. Malcolm,
Deputy Clerk. [142]

[Endorsed]: No. 5688. United States Circuit Court of Appeals for the Ninth Circuit. General Accident, Fire & Life Assurance Corporation, Ltd., a Corporation, Appellant, vs. L. A. Clark and Etta Clark, His Wife, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Arizona.

Filed January 14, 1929.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 5688.

GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPORATION, LTD., a Corporation,

Appellant,

vs.

L. A. CLARK and ETTA CLARK, His Wife,

Appellees.

STIPULATION AS TO PRINTING OF RECORD.

IT IS HEREBY STIPULATED by and between the parties hereto, through their respective counsel, that the Clerk of this court in printing the record on appeal herein may omit therefrom the following papers and documents:

Petition for Removal from Superior Court of Yavapai County, Arizona, to United States District Court for the District of Arizona;

Notice of Petition for Removal and attached copies of Petition and Bond;

Bond on Removal to Federal Court;

Order for Removal to Federal Court (both Minute Order and formal written Order for Removal).

it being the purpose and intent hereof to reduce the record to be examined by this Court by excluding therefrom unnecessary papers and to reduce the cost of the printing of said record.

IT IS FURTHER STIPULATED AND AGREED that the jurisdiction of the federal court on removal was not called in question herein nor did it form an issue in said cause.

Dated this 18th day of January, A. D. 1929.

SLOAN, HOLTON, McKESSON & SCOTT,
Attorneys for Appellant.

ANDERSON & GALE,
Attorneys for Appellees.

[Endorsed]: Stipulation as to Printing of Record. Filed Jan. 21, 1929. Paul P. O'Brien, Clerk.